

# **EXHIBIT AAA**

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

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5 MCDONALD'S CORPORATION,

6 Plaintiff,

7 vs. Case No. 1:19-cv-06471 (DLI) (SLT)

8 VANDERBILT ATLANTIC HOLDINGS

9 LLC,

10 Defendant.

11 -----x

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13 VIDEOTAPE DEPOSITION OF

14 PINCHUS S. ROTTENBERG

15 VIA ZOOM VIDEOCONFERENCE

16 August 12, 2021

17 10:04 a.m.

18

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22 Reported by:

23 Maureen Ratto, RPR, CCR

24

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\* \* \*

Videotape deposition of Pinchus S.  
Rottenberg held virtually via Zoom  
Teleconference, hosted from Veritext Legal  
Solutions, pursuant to notice, before  
Maureen Ratto, Certified Court Reporter,  
License No. XI01165, Registered  
Professional Reporter, License No. 817125,  
and Notary Public.

\* \* \*

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1 ALSO PRESENT:

2 STACY HOWARD, ESQ. Senior General Counsel

3 MICHAEL MEYER, ESQ., McDonalds Corporation

4 SHARYL AMOVITZ, Senior Paralegal McDonalds  
5 Corporation

6 THOMAS LI, Vanderbilt Atlantic

7 JONATHAN POPHAM, Legal Video Specialist

8 TEVIN FRANK, Veritext Concierge

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1 VIDEOGRAPHER: Good morning. We  
2 are going on the record at 10:04  
3 Eastern Time on August 12, 2021.

4 Please note that the microphones  
5 are sensitive and may pick up  
6 whispering, private conversations and  
7 cellular interference. Audio and  
8 video recording will continue unless  
9 all parties agree to go off the  
10 record.

11 This is Media Unit 1 of the  
12 video deposition of Sam Rottenberg,  
13 taken by counsel for Plaintiff in the  
14 matter of McDonald's Corporation  
15 versus Vanderbilt Atlantic Holdings,  
16 LLC filed in the United States  
17 District Court, for the Eastern  
18 District of New York, Case No.  
19 1:19-CV-06471 (DLI)(SLT). This  
20 deposition is being held in multiple  
21 locations via videoconference.

22 My name is John Popham from  
23 Veritext and I'm the videographer. The  
24 court reporter is Maureen Ratto, also  
25 from Veritext.

1 I'm not authorized to administer  
2 an oath, I'm not related to any party  
3 in this action, nor am I financially  
4 interested in the outcome.

5 Counsel will now please state  
6 their appearances and affiliations for  
7 the record.

8 MR. WALSH: Good morning.  
9 Brendan Walsh from the law firm of  
10 Pashman Stein Walder Hayden on behalf  
11 of Plaintiff, McDonald's Corporation.

12 MR. KOH: Howard Koh, Meister,  
13 Seeling & Fein, representing the  
14 Defendant, Vanderbilt Atlantic  
15 Holdings, LLC.

16 MS. HOWARD: Stacy Howard  
17 present on behalf of McDonald's  
18 Corporation. I'm inhouse counsel.

19 MS. ALVAREZ: Denise Alvarez  
20 from Pashman Stein Walder Hayden  
21 representing Plaintiff McDonald's.

22 MR. MEYER: Mike Meyer present,  
23 I am senior counsel with McDonald's.

24 VIDEOGRAPHER: Anyone else?

25 Will the court reporter please

1 PINCHUS S. ROTTENBERG

2 affirm the witness?

3 \* \* \*

4 P I N C H U S S. R O T T E N B E R G,  
5 having affirmed according to law by the  
6 Officer, testifies as follows:

7 DIRECT EXAMINATION BY MR. WALSH:

8 Q. Mr. Rottenberg, how are you  
9 today?

10 A. I am doing fine. Thank you,  
11 Brendan. How about yourself?

12 Q. I'm doing all right. Thanks.

13 So although we're not in court  
14 today, you're under oath and obligated to  
15 tell the truth. Do you understand that?

16 A. I do.

17 Q. And you understand there is a  
18 court reporter here taking down everything  
19 that is also being videotaped?

20 A. I do.

21 Q. All right. So I'm going to ask  
22 you questions today and if you don't  
23 understand the question, please just let me  
24 know. If you answer the question I'm going  
25 to assume that you understood it.



1 PINCHUS S. ROTTENBERG

2 Even though you're being  
3 videotaped and we can all see you, please  
4 answer the questions verbally because the  
5 court reporter can't take down non-verbal,  
6 you know, nods or hand signals. Do you  
7 understand that?

8 A. I do.

9 Q. And just please make sure you  
10 let me finish speaking before you start  
11 speaking and I'll do the same for you. The  
12 court reporter can't take it all down if  
13 more than one person is talking at the same  
14 time.

15 Your attorney may object to some  
16 of my questions. You'll still be required to  
17 answer the question, unless your attorney  
18 directs you not to. This is not -- you know,  
19 we'll probably be here many hours today. If  
20 you need a break, just let me know and we'll  
21 take one, so long as there is not a question  
22 pending.

23 Do you understand these  
24 instructions?

25 A. Yes.

1 PINCHUS S. ROTTENBERG

2 Q. Is there any reason, such as  
3 medication, that would prevent you from  
4 understanding my questions or giving  
5 complete and accurate answers to my  
6 questions today?

7 A. No.

8 Q. Where are you taking the  
9 deposition from today?

10 A. My office.

11 Q. And where is that?

12 A. In Brooklyn, New York.

13 Q. Where specifically?

14 A. 266 Broadway.

15 Q. Okay. Are you in the room alone?

16 A. Yes.

17 Q. Is the door closed?

18 A. Yes.

19 Q. Okay. Can you describe just your  
20 setup is today; what screens are in front of  
21 you; how you're doing this remotely; just  
22 anything that you're going to be looking at  
23 today?

24 A. I see one screen, this Zoom call  
25 that we're on and I see one screen the

1 PINCHUS S. ROTTENBERG

2 Veritext! Marked Exhibits.

3 Q. So you're set up and you're  
4 going to be able to use the Veritext Exhibit  
5 Share platform right now?

6 A. Correct.

7 Q. And you have all other programs  
8 closed, besides the Zoom?

9 A. No.

10 Q. What other programs do you have  
11 open?

12 A. None.

13 Q. Oh, okay. And do you feel that  
14 you've got the proper technology and  
15 bandwidth required to conduct this remote  
16 deposition properly?

17 A. Yes, sir.

18 Q. Are you represented by counsel  
19 today?

20 A. Yes, sir.

21 Q. And is that Mr. Koh?

22 A. Yes.

23 Q. You understand that you may not  
24 have any private conversations or chats or  
25 communications, you know, by text message,

1 PINCHUS S. ROTTENBERG

2 you know, basically while this deposition is  
3 ongoing and especially while a question is  
4 pending, except for determining whether a  
5 privilege should be asserted?

6 A. Yes.

7 Q. Okay. So have you ever been  
8 deposed before?

9 A. Yes.

10 Q. When was that?

11 A. I can't remember when.

12 Q. How many times do you think  
13 you've been deposed?

14 A. I think two times.

15 Q. Do you recall what types of  
16 cases those were?

17 A. Yes.

18 Q. Can you tell me a little bit  
19 about each case?

20 A. One case was relating to -- I  
21 think it was an investigation on a property  
22 that they thought that I was related which  
23 it wasn't related and the second one was  
24 relating to another property sale in the  
25 City that I was related as a broker, my role

1 PINCHUS S. ROTTENBERG

2 was just a broker.

3 Q. Okay. And the investigation that  
4 you mentioned for the first example, do you  
5 recall who was conducting that  
6 investigation?

7 A. No.

8 Q. But it was not a property that  
9 you were actually involved with?

10 A. No.

11 Q. Were you a named party in that  
12 litigation?

13 A. I wouldn't remember.

14 Q. And with the second property,  
15 what was the address of that property?

16 A. 45 Rivington.

17 Q. And what was the nature of that  
18 dispute?

19 A. The nature of the dispute? It  
20 wasn't a dispute. It was an investigation  
21 about the restricted deed removal on a  
22 property.

23 Q. And who was conducting that  
24 investigation?

25 A. Oh, multiple people.

1 PINCHUS S. ROTTENBERG

2 Q. Was it law enforcement?

3 A. Yes.

4 Q. And what City -- you said 45  
5 Rivington, I believe. What city is that  
6 address in?

7 A. New York City.

8 Q. In what borough?

9 A. Manhattan.

10 Q. Manhattan. And it was being --  
11 it was an investigation conducted by law  
12 enforcement?

13 A. Correct.

14 Q. And are you aware if any civil  
15 or criminal charges were brought?

16 A. No.

17 Q. Were you ever told that you were  
18 a target of that investigation?

19 A. No.

20 Q. And what specific involvement  
21 did you have? You said you were a broker?

22 A. Correct.

23 Q. And so if you could just briefly  
24 explain, you know, what they were -- what  
25 they wanted to talk to you about.

1 PINCHUS S. ROTTENBERG

2 MR. KOH: Objection. You can go  
3 ahead and answer.

4 A. Like, I guess they wanted to  
5 know what my involvement was, the extent I  
6 had knowledge of whatever was going on.

7 Q. And do you recall why, you know,  
8 that law enforcement was investigating this.

9 MR. KOH: Objection. Go ahead  
10 and answer.

11 A. I guess there was a deed  
12 removal. So there was a restriction deed on  
13 the property that was removed.

14 Q. And law enforcement typically  
15 doesn't get involved in that. Do you know  
16 why law enforcement was involved.

17 MR. KOH: Objection. Go ahead  
18 and answer.

19 A. I guess it has to do something  
20 with the City.

21 Q. So do you know why law  
22 enforcement was involved?

23 A. No.

24 Q. Okay. And have you ever  
25 testified in a court?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Okay. Do you understand that  
4 you're being deposed today as Vanderbilt's  
5 corporate representative pursuant to Rule  
6 30(b)(6) of the Federal Rules of Civil  
7 Procedure?

8 A. I don't know what the definition  
9 of that numbers that you threw out there.

10 Q. But are you aware that you're  
11 being -- that you were designated as the  
12 corporate representative for Vanderbilt  
13 Atlantic Holdings?

14 A. Yes.

15 Q. Okay. During the deposition I'm  
16 going to be referring to Vanderbilt Atlantic  
17 Holdings, LLC primarily as Vanderbilt, just  
18 so you are aware of that.

19 If we could mark the 2021.07.21  
20 Amended Rule 30(b)(6) notice to Vanderbilt  
21 as Exhibit P1?

22 (Plaintiff Exhibit 1, Amended  
23 Rule 30(b)(6) notice to Vanderbilt  
24 Atlantic Holdings was received and  
25 marked on this date for



1 PINCHUS S. ROTTENBERG

2 identification.)

3 Q. And this is the amended notice  
4 of Rule 30(b)(6) deposition of Vanderbilt  
5 Atlantic Holdings, LLC issued by my office  
6 dated July 21st, 2021.

7 So if you can pull that up,  
8 please? Actually, I don't think it's  
9 necessary to share on the screen.

10 Mr. Rottenberg, are you able to  
11 pull that up through the Exhibit Share  
12 technology?

13 A. It should.

14 Q. I think if you refresh that  
15 folder you should see it there.

16 A. Yeah.

17 Q. Okay. Can you just quickly take  
18 a look at this document and let me know if  
19 you've seen this document before?

20 A. Yes, sir.

21 Q. You have?

22 A. Yes.

23 Q. And on the last two pages of the  
24 document it lists 23 deposition topics. Have  
25 you reviewed those topics?

1 PINCHUS S. ROTTENBERG

2 A. Yes.

3 Q. Okay. And it's -- do you  
4 understand that you've been designated to  
5 answer questions on each of these topics on  
6 behalf of Vanderbilt?

7 A. Yes.

8 Q. Are you knowledgeable on each of  
9 these topics?

10 A. I don't know if each of the  
11 topics, but...

12 Q. Well, what topics are you not  
13 knowledgeable on?

14 A. I guess if you go through that  
15 we'll get to it.

16 Q. Okay. If you could just tell us,  
17 you know, because you've been designated as  
18 the person most knowledgeable to answer  
19 questions on behalf of Vanderbilt as to all  
20 of these topics. And it's very pertinent  
21 that we understand if you don't have  
22 knowledge as to certain of these topics.

23 MR. KOH: I'm going to object,  
24 Brendan. He was designated as the  
25 person at Vanderbilt Atlantic who was

1 PINCHUS S. ROTTENBERG

2 most knowledgeable on these topics.

3 Vanderbilt Atlantic, as I'm sure you  
4 will discover, is not a large company  
5 and we know what we know.

6 MR. WALSH: Well, yes, but he  
7 also has an obligation to educate  
8 himself on anything that he didn't  
9 have personal knowledge on --

10 MR. KOH: I understand the  
11 obligation.

12 MR. WALSH: -- reasonably  
13 available to Vanderbilt.

14 MR. KOH: I understand.

15 MR. WALSH: To the extent he  
16 does not have knowledge on any  
17 particular topic, I think it's  
18 important that we understand right  
19 now.

20 MR. KOH: I agree with that. And  
21 ask your questions. I was just making  
22 my objection to the characterization,  
23 but please go on.

24 Q. Mr. Rottenberg, of these 23  
25 deposition topics, are there any that you

1 PINCHUS S. ROTTENBERG

2 don't feel that you are knowledgeable on?

3 A. Again, as Howard alluded to, I  
4 should have knowledge, except if my attorney  
5 sought other kind of guys that I hired have  
6 more knowledge than I do.

7 Q. So I don't think you answered my  
8 question.

9 Are there -- are there any  
10 topics on this list that you are not  
11 knowledgeable to speak about today?

12 A. I have to go through that list.

13 Q. Okay.

14 A. I can't remember off the top of  
15 my head, you know, all 23 items.

16 Q. Okay. If you could just take a  
17 couple minutes and review the list.

18 (Deponent reviews the document.)

19 A. So what is your question?

20 Q. So you've now had an opportunity  
21 to review all the deposition topics?

22 A. Yeah. I briefly glanced through  
23 it, yes.

24 Q. Okay. Are you knowledgeable on  
25 each of the topics that are in this

1 PINCHUS S. ROTTENBERG

2 deposition notice?

3 A. Yes. I am knowledgeable of the  
4 topics, yes.

5 Q. Okay. Now, what did you do to  
6 educate yourself about these topics?

7 A. I'm not sure I understand the  
8 question.

9 Q. What did you do to prepare for  
10 today's deposition?

11 A. Just reviewed the documents.

12 Q. Which documents?

13 A. I talked to my attorney.

14 Q. Okay. What documents do you  
15 recall reviewing?

16 A. The documents -- I don't know.  
17 The files that were shared yesterday,  
18 yesterday or the day before.

19 Q. Okay. So the documents that we  
20 sent over to your lawyer?

21 A. Correct.

22 Q. Okay. And you got those  
23 yesterday?

24 A. I think so.

25 Q. Did you review any documents

1 PINCHUS S. ROTTENBERG

2 other than those documents?

3 A. No.

4 Q. And you said you met with your  
5 attorney?

6 A. Correct.

7 Q. Was anyone else present during  
8 that meeting?

9 A. No.

10 Q. Okay. When was that?

11 A. I think two days ago.

12 Q. Okay. And did you review any  
13 documents during that meeting?

14 A. Yes.

15 Q. Which documents?

16 A. I don't know. Various documents.  
17 I can't identify which documents.

18 Q. Okay. And how long did that  
19 meeting last?

20 A. A couple hours.

21 Q. And no one else was present at  
22 that meeting, just you and Mr. Koh?

23 A. Correct.

24 Q. And did you have any other  
25 meetings with Mr. Koh or anyone else to

1 PINCHUS S. ROTTENBERG

2 prepare for today's deposition?

3 A. No.

4 Q. You didn't speak with anybody  
5 else at Vanderbilt about any of these topics  
6 included in the deposition notice?

7 A. No. I spoke to I guess to Tom  
8 about the fact that it is a deposition.  
9 That's all.

10 Q. Okay. But you didn't try to get  
11 into the substance of any of these topics  
12 with him?

13 A. No. No.

14 Q. Did you consider doing that?

15 A. No.

16 Q. Okay. And are there any topics  
17 in this that you feel that you're not  
18 prepared to testify about today?

19 A. I don't think so.

20 Q. Okay. Can you just share with us  
21 just your educational background?

22 A. Such as?

23 Q. What degrees you have? Did you  
24 go to college? High school? Just your  
25 general education background.

1 PINCHUS S. ROTTENBERG

2 A. I didn't go to college. I didn't  
3 go to high school.

4 Q. So what was the last grade you  
5 completed?

6 A. I don't even know what's  
7 considered the last grade completed. I'm  
8 sorry.

9 Q. Okay. And how about your  
10 employment history, when did you start  
11 working after you stopped school?

12 A. I start working?

13 Q. Yes.

14 A. I would say 18 years ago.

15 Q. Okay. And how old are you?

16 A. 40.

17 Q. 40. So when you were around 22  
18 years old you started working?

19 A. I guess.

20 Q. Okay. And can you just give me  
21 just a summary of your employment history,  
22 sort of where you've worked over the course  
23 of the past 18 years?

24 A. I don't have a summary of where  
25 I worked. I never worked for somebody



1 PINCHUS S. ROTTENBERG

2 specifically. I always was kind of doing  
3 work just, doing work on my own.

4 Q. And what type of work?

5 A. Real estate brokerage.

6 Q. So you're a real estate broker?

7 A. Correct.

8 Q. Are you licensed?

9 A. Yes.

10 Q. And when did you become  
11 licensed?

12 A. I can't remember.

13 Q. Do you remember approximately  
14 how long ago?

15 A. I can't remember.

16 Q. And is there -- and what states  
17 are you licensed in?

18 A. New York.

19 Q. Okay. And so am I understanding  
20 you correctly that for you've essentially  
21 the last 18 years been a self-employed real  
22 estate broker?

23 A. Correct. I don't know the full  
24 18 years but it was self-employed, so  
25 generally.

1 PINCHUS S. ROTTENBERG

2 Q. And when did you become involved  
3 with Vanderbilt Atlantic Holdings, LLC?

4 A. When Vanderbilt was created.

5 Q. And when was that?

6 A. I can't remember.

7 Q. Does November 2017 sound about  
8 right?

9 A. Could be.

10 Q. And what is your position with  
11 Vanderbilt?

12 A. I am the general partner.

13 Q. And what do you mean by "the  
14 general partner"?

15 A. The decisionmaking day-to-day  
16 operations.

17 Q. So you are responsible for all  
18 of the decisions of the day-to-day  
19 operations?

20 A. Correct.

21 Q. Are there any other general  
22 partners?

23 A. General partners, no.

24 Q. Who are the other partners?

25 A. Simon Dushinsky.

1 PINCHUS S. ROTTENBERG

2 Q. And what is Mr. Dushinsky's role  
3 with Vanderbilt?

4 A. A limited partner.

5 Q. And what does that mean?

6 A. Just sitting and letting me do  
7 the day-to-day operations.

8 Q. So do you -- do you consult with  
9 him about decisions before you make them?

10 A. Sometimes. Sometimes not,  
11 sometimes yes.

12 Q. What types of decisions would  
13 you run past Mr. Dushinsky before making  
14 them?

15 A. There is no general rule. If  
16 there is a type of decision, whatever, if it  
17 comes along that happens. If it doesn't,  
18 not. It doesn't have, like, a rule what I  
19 run by him and what's not.

20 Q. So you have discretion as the  
21 general partner to make decisions?

22 A. Yes.

23 Q. Okay. And can you tell me a  
24 little bit about Mr. Dushinsky? Is he also  
25 self-employed?

1 PINCHUS S. ROTTENBERG

2 MR. KOH: Objection. Go ahead  
3 and answer.

4 A. I don't know what self-employed  
5 is described but he runs a development  
6 company, a real estate development company.

7 Q. And what is the name of that  
8 real estate?

9 A. Rabsky Group.

10 Q. Do you receive compensation from  
11 Vanderbilt for the work you do?

12 A. No.

13 Q. You don't?

14 A. No.

15 Q. Do you receive compensation from  
16 any source for the work you're doing for  
17 Vanderbilt?

18 A. No.

19 Q. So you have not received any  
20 compensation for any of the work you've done  
21 as the general partner for Vanderbilt?

22 A. No.

23 Q. Okay. So I guess if I can just  
24 ask, you know, do you expect to receive  
25 compensation for the work that you are doing

1 PINCHUS S. ROTTENBERG

2 and have done on behalf of Vanderbilt?

3 A. We're partners, so I'm not sure  
4 what the question is all about.

5 Q. Well, do you expect to earn a  
6 profit off of the work that you're doing for  
7 Vanderbilt?

8 A. Again, I'm not sure I follow the  
9 question.

10 Q. Okay. Do you expect to make  
11 money from your involvement with Vanderbilt  
12 Atlantic Holdings?

13 A. Of course.

14 Q. And how would you earn money?  
15 What are the different sources that you  
16 could potentially receive compensation for  
17 the work you're performing at Vanderbilt?

18 A. Adding value to the property,  
19 refinancing, recapping, multiple ways.

20 Q. Are there any other ways other  
21 than the ones you just mentioned?

22 A. No.

23 Q. Okay. And does Vanderbilt own  
24 any real estate other than 840 Atlantic  
25 Avenue in Brooklyn, New York?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Okay. And I just -- I may during  
4 the deposition refer to 840 Atlantic Avenue  
5 as "the property". Do you understand that?

6 A. Again?

7 Q. I may during the deposition  
8 refer to 840 Vanderbilt Avenue as "the  
9 property". Do you understand that?

10 A. Yes.

11 Q. Okay. So how many employees does  
12 Vanderbilt have?

13 A. Two.

14 Q. Who are they?

15 A. Myself and Tom Li.

16 Q. And so it has two employees, you  
17 and Tom Li; and two members, you and Simon  
18 Dushinsky?

19 A. Correct.

20 Q. What percentage of the company  
21 or the membership interest do you own and  
22 what percentage does --

23 A. 50/50.

24 Q. 50/50. Okay. Is that how  
25 compensation would be split between the two

1 PINCHUS S. ROTTENBERG

2 partners?

3 A. Yes.

4 Q. Okay. Have you ever -- are you a  
5 member of the Rabsky Group?

6 A. No.

7 Q. What is the Rabsky Group?

8 MR. KOH: Objection. Go ahead  
9 and answer.

10 A. A development company.

11 Q. It's a real estate development  
12 company?

13 A. Correct.

14 Q. Okay. And by the way, does Tom  
15 Li, the other employee, earn a salary?

16 A. Yes.

17 Q. And what is his salary?

18 A. It's not a salary on Vanderbilt.  
19 So it's just a salary on -- under SPR Group  
20 which is my company.

21 Q. So SPR Group is your company?

22 A. Correct.

23 Q. How many employees of SPR Group  
24 are there?

25 A. Three.

1 PINCHUS S. ROTTENBERG

2 Q. Who are they?

3 A. Tom Li, myself, and a gentleman  
4 named Dov Feder.

5 Q. Is Dov Feder involved with this  
6 property at all?

7 A. No.

8 Q. And what is the relationship  
9 between Vanderbilt and SPR Group?

10 MR. KOH: Objection. Go ahead  
11 and answer.

12 A. No relationship.

13 Q. There is no relationship, but  
14 SPR Group is paying Tom Li's salary?

15 A. No. SPR Group is paying Tom Li's  
16 salary as SPR Group but he's not getting any  
17 salary for Vanderbilt.

18 Q. Okay. So if there is no  
19 relationship between the two companies, why  
20 is SPR Group paying Tom Li's salary for his  
21 work for Vanderbilt?

22 A. There is a lot of work at SPR  
23 Group outside of Vanderbilt that Tom Li also  
24 works for.

25 Q. Okay. So the salary that he



1 PINCHUS S. ROTTENBERG

2 earns is for multiple properties and other  
3 entities besides Vanderbilt?

4 A. Correct.

5 Q. Do you know what properties  
6 those are?

7 A. I mean, it's not property, it's  
8 just, you know, all the other stuff.

9 Q. So what other stuff are you  
10 involved with at SPR Group?

11 A. Just typical brokerage stuff.

12 Q. I don't understand what you mean  
13 by "typical brokerage stuff". If you could  
14 just explain?

15 A. As I said, I'm a professional  
16 real estate broker, so this is my profession  
17 and this is what I'm working with Tom Li on.

18 Q. Is Tom -- are you or Tom working  
19 on any other development projects?

20 A. "Working on" in terms of?

21 Q. Are you actively seeking to  
22 develop or redevelop other properties other  
23 than 840 Atlantic Avenue?

24 MR. KOH: Objection, go ahead.

25 A. I can't recall any other.

1 PINCHUS S. ROTTENBERG

2 Q. You don't know or you can't  
3 recall?

4 A. I can't recall. I can't remember  
5 at this point.

6 Q. You don't know whether you're  
7 actively working on any other developments  
8 or redevelopments?

9 A. No. No. So I'm not working, you  
10 know, based on my knowledge, I'm not working  
11 on any other.

12 Q. Is Tom Li?

13 A. I don't think so.

14 MR. KOH: Objection.

15 Q. So this is the only active  
16 project that SPR Group -- the active  
17 development or redevelopment project that  
18 SPR is working on?

19 A. Correct.

20 Q. And so what else is Tom Li being  
21 compensated for then?

22 A. For the broker business related  
23 that we're doing.

24 Q. What percentage of his work  
25 involves Vanderbilt versus the brokerage

1 PINCHUS S. ROTTENBERG

2 related work?

3 A. Oh, I don't know.

4 Q. Can you just estimate for me?

5 A. Very very small portion.

6 Q. A very small portion of what?

7 A. Of the overall work that he's  
8 doing.

9 Q. So let me just clarify. A very  
10 small portion of Tom Li's work relates to  
11 Vanderbilt?

12 A. It's very hard to -- I don't  
13 know which kind of percentage that is, so...

14 Q. You said a very small  
15 percentage. Is it a very small percentage of  
16 work he does for Vanderbilt or a very small  
17 percentage of his work relates to things  
18 other than Vanderbilt?

19 A. I'm not sure I understand the  
20 question.

21 Q. I'm trying to understand where  
22 is the majority of Tom Li's time spent,  
23 working on behalf of Vanderbilt or working  
24 on behalf of other projects through SPR  
25 Group?

1 PINCHUS S. ROTTENBERG

2 A. Working on behalf of other  
3 projects.

4 Q. So are you personally involved  
5 in any other development or redevelopment  
6 projects?

7 A. No.

8 Q. Okay. Do you hold a position  
9 with the Rabsky Group?

10 A. No.

11 Q. Do you receive compensation from  
12 the Rabsky Group?

13 A. No.

14 MR. WALSH: Okay. I'd like to  
15 mark the document that's Bates stamped  
16 VA-029030 as Exhibit 2.

17 (Plaintiff Exhibit 2,  
18 Organizational Chart for 840 Atlantic  
19 Avenue, Bates VA-029030 was received  
20 and marked on this date for  
21 identification.)

22 Q. Okay. Mr. Rottenberg, can you  
23 just open that document? It's a two-page  
24 PDF. It's a document that spans Bates  
25 VA-029030 to -31. Do you see it?

1 PINCHUS S. ROTTENBERG

2 A. Yes.

3 Q. Have you seen this document  
4 before?

5 A. I can't remember but I'm sure  
6 I've seen it.

7 Q. Do you know who prepared it?

8 A. No.

9 Q. And what is it?

10 A. That's an org chart.

11 Q. Okay. So the top of -- an org  
12 chart for what?

13 A. I don't know. I have to see. For  
14 840 Atlantic Avenue.

15 Q. Okay. On the very top it shows  
16 Simon Dushinsky and it says 100% and there  
17 is two arrows, one that goes to Vanderbilt  
18 Atlantic Holdings, LLC a little further down  
19 the org chart. Do you see that?

20 A. Yeah.

21 Q. So that's inaccurate? You said  
22 you're both 50/50 owners of Vanderbilt  
23 Atlantic Holdings?

24 A. Yes, we are.

25 Q. Okay. And what is 840 Atlantic,

1 PINCHUS S. ROTTENBERG

2 LLC?

3 A. That's Simon Dushinsky's entity.

4 Q. Are you a member of that entity?

5 A. No.

6 Q. So he's 100% owner of that  
7 entity?

8 A. Yes.

9 Q. Okay. And what is -- so right  
10 below that it says 840 Atlantic Holdings,  
11 LLC. What is that?

12 A. I think that's my entity.

13 Q. So you're the 100% owner of 840  
14 Vanderbilt Atlantic, LLC?

15 A. Yes.

16 MR. KOH: Objection. Go ahead.

17 Fine.

18 Q. And then next to 840 Atlantic  
19 Holdings, LLC it says Anthony Musto and A.M.  
20 Musto Irrevocable Family. Do you see that?

21 A. Yeah.

22 Q. And then directly below those  
23 boxes it says M.M.B. Associates, LLC. Do you  
24 see that?

25 A. Correct.

1 PINCHUS S. ROTTENBERG

2 Q. So what is -- can you just  
3 explain to me the relationship between  
4 M.M.B. Associates, LLC and the three -- the  
5 names in the three boxes directly above  
6 that?

7 A. Which three boxes?

8 Q. A.M. Musto Irrevocable Family  
9 Trust, Anthony Musto and 840 Atlantic  
10 Holdings, LLC.

11 A. Again, which three boxes? I  
12 didn't pay attention.

13 Q. The three boxes directly above  
14 M.M.B. Associates, LLC.

15 A. Okay.

16 Q. So what is the -- I'm just  
17 trying to understand what the relationship  
18 of the three names in the three boxes  
19 directly above M.M.B. Associates are to  
20 M.M.B.

21 Are those the three owners of  
22 M.M.B. Associates, LLC?

23 A. Yes.

24 Q. Okay. So 840 Atlantic Holdings,  
25 LLC is a 20% owner of M.M.B. Associates?

1 PINCHUS S. ROTTENBERG

2 A. Again, this is all I think, so  
3 -- but yeah, according to this document,  
4 yes.

5 Q. So what about now? Do you know  
6 who the members of M.M.B. Associates are?

7 A. It's the same members.

8 Q. Okay. So 840 Atlantic Holdings,  
9 LLC is a 20% member of M.M.B. Associates?

10 A. Yes.

11 Q. And when did 840 Atlantic --

12 A. I don't know, 20 or 25. So I'm  
13 not sure.

14 Q. Okay. When did 840 Atlantic  
15 Holdings, LLC become a member of M.M.B.  
16 Associates?

17 A. I can't remember times.

18 Q. Do you remember, was it around  
19 the same time that Vanderbilt entered into  
20 its lease with M.M.B.?

21 A. I can't remember.

22 Q. Was it -- do you remember in  
23 your life when it happened? Was it 10 years  
24 ago? 20 years ago? Five years ago?

25 A. I can't remember.



1 PINCHUS S. ROTTENBERG

2 Q. So was 840 Atlantic Holdings --  
3 I guess by virtue of its name, 840 Atlantic  
4 Holdings, does that give you any indication  
5 of when that entity became a member of  
6 M.M.B. Associates?

7 A. No.

8 Q. What is -- did you pay  
9 consideration or did that entity pay  
10 consideration to become a member of M.M.B.  
11 Associates?

12 A. Yes.

13 Q. And what was that?

14 A. I don't remember.

15 Q. Was it more than a million  
16 dollars?

17 A. I would not remember.

18 Q. You wouldn't remember if it was  
19 more or less than one million dollars?

20 A. I think it was more.

21 Q. Okay. Was it more than \$5  
22 million?

23 A. No.

24 Q. And Vanderbilt Atlantic  
25 Holdings, LLC is not a member of M.M.B.

1 PINCHUS S. ROTTENBERG

2 Associates, LLC, right?

3 A. Correct.

4 Q. And what is 9102 Ditmas  
5 Holdings, LLC?

6 A. That's a property located at  
7 9102 Ditmas Avenue in Brooklyn.

8 Q. That's an unrelated property to  
9 840 Atlantic Avenue?

10 A. Correct.

11 Q. And what is located on that  
12 property?

13 A. I don't know. Industrial  
14 property.

15 Q. So when did you first I guess  
16 become affiliated or when did you first  
17 start working, doing work related to the  
18 property at 840 Atlantic Avenue?

19 A. I don't remember when it was.

20 Q. Do you know how you learned  
21 about it?

22 A. I talked to Tony Musto.

23 Q. Who is Tony Musto?

24 A. He's the owner of M.M.B.  
25 Associates.

1 PINCHUS S. ROTTENBERG

2 Q. So he was the owner of M.M.B.  
3 Associates at the time you learned about it?

4 A. Correct.

5 Q. Do you recall, did you approach  
6 him about it? Did he approach you?

7 A. I don't remember.

8 Q. And do you remember  
9 approximately when that was?

10 A. No.

11 Q. And why did you begin talking  
12 about the property?

13 A. I don't know.

14 Q. You don't know?

15 A. No.

16 Q. You just started talking about  
17 it?

18 A. I guess.

19 Q. Were you talking about  
20 potentially redeveloping it with something  
21 other than a McDonald's?

22 A. I think so.

23 Q. You were? So if you could just  
24 tell me a little bit about what you were  
25 discussing as far as redevelopment.

1 PINCHUS S. ROTTENBERG

2 A. I don't have any specifics what  
3 I can tell you other than we talked about  
4 it, which I can't even remember what it was.

5 Q. Now, did -- was the Rabsky Group  
6 involved in those initial discussions you  
7 had with Tony Musto?

8 A. I can't remember. There might  
9 have been, might not have been, so...

10 Q. Do you think there were?

11 A. I can't remember.

12 Q. Okay. If you could take -- I'd  
13 like to mark the document VA-016544 as  
14 Exhibit P3.

15 (Plaintiff Exhibit 3, email  
16 string last dated June 19, 2017, Bates  
17 VA-016544 was received and marked on  
18 this date for identification.)

19 A. Just a second.

20 CONCIERGE: It's been uploaded.

21 Q. So Exhibit P-3 is a document  
22 that's Bates stamped VA-016544 through 548.

23 Mr. Rottenberg, if you could  
24 just open that document and take a look at  
25 it. I'd like to ask you some questions about

1 PINCHUS S. ROTTENBERG

2 it.

3 A. Yeah.

4 Q. Do you have it?

5 A. I do.

6 Q. So the first page is an email  
7 from you to Jonathan Eiseman of Eiseman  
8 Levine, and Jay Levington with a cc to Simon  
9 Dushinsky and Tony Musto and  
10 GroupRabsky@Gmail.com. Do you see that?

11 A. I do.

12 Q. So who is Jonathan Eiseman?

13 A. He's the attorney.

14 Q. The attorney for the Rabsky  
15 Group?

16 A. Vanderbilt Atlantic Holdings.

17 Q. How about Jay Levington?

18 A. Levington is the attorney for  
19 M.M.B., Tony Musto.

20 Q. And when you -- so this email is  
21 dated June 2017. Were you or was your entity  
22 a member of M.M.B. Associates at that time?

23 A. I can't remember.

24 Q. If you could turn to the first  
25 page ending in Bates stamp 16545, there is a

1 PINCHUS S. ROTTENBERG  
2 header about midway down the page that says  
3 the Rabsky Group. Do you see that?

4 A. Yes.

5 Q. And the second paragraph talks  
6 about "TRG" which is defined above as the  
7 Rabsky Group, "TRG's recent local  
8 acquisition and development experience." Do  
9 you see that?

10 A. I do.

11 Q. And so this -- and this is a  
12 letter dated June 12th, 2017 from you to  
13 M.M.B. Associates; is that correct?

14 A. Which letter from me? Not from  
15 me.

16 Q. It's signed by you, correct?

17 MR. KOH: It's not.

18 Q. If you look at the last name,  
19 last page --

20 MR. KOH: Look at it.

21 Q. -- do you see where it says  
22 Simon Dushinsky?

23 A. It's not me.

24 Q. Oh, you're not Simon Dushinsky.  
25 That's correct.

1 PINCHUS S. ROTTENBERG

2 So this is a letter from Simon  
3 Dushinsky to M.M.B. Associates. And this is  
4 a Letter of Intent where it says above, "An  
5 indication of interest to lease 840 Atlantic  
6 Avenue, Brooklyn, New York"; is that right?

7 A. Correct.

8 MR. KOH: Objection.

9 Q. And the letter touts -- or at  
10 least describes the Rabsky Group's recent  
11 local acquisition and development  
12 experience, right?

13 A. Correct.

14 Q. Okay. And the very bottom of  
15 that first page of the letter it talks about  
16 how it's in the process to get approvals on  
17 the old Pfizer parcel in Brooklyn to  
18 potentially develop over one million square  
19 feet of housing; is that correct?

20 A. Correct.

21 Q. And second page of the letter  
22 ending in 546 it defines the property at 840  
23 Atlantic Avenue, Brooklyn, New York,  
24 correct, correct? Is that correct?

25 A. Again, what was your question?

1 PINCHUS S. ROTTENBERG

2 Q. The second page of the letter it  
3 defines the property as 840 Atlantic Avenue,  
4 Brooklyn, New York? Do you see that?

5 A. Yes.

6 Q. And the Rabsky Group was  
7 proposing a 99-year lease of that property,  
8 right?

9 A. Correct.

10 Q. So the next -- so section 5 it  
11 says, the first sentence, "For so long as  
12 the lease with McDonald's is in effect,  
13 tenant shall pay to landlord the base rent  
14 that McDonald's is required to pay under its  
15 lease with tenant so that there shall be a  
16 direct passthrough of the base rent under  
17 the McDonald's lease." Do you see that?

18 A. I do.

19 Q. Okay. And am I correct in  
20 understanding that what the Rabsky Group was  
21 proposing was that so long as McDonald's was  
22 on the property any rent that McDonald's  
23 pays would be passed through to M.M.B.  
24 Associates?

25 A. Yes.



1 PINCHUS S. ROTTENBERG

2 Q. Now, before this letter was  
3 sent, had there been any discussions between  
4 M.M.B. Associates and the Rabsky Group about  
5 this potential lease?

6 A. I'm sure it was. I can't  
7 remember, but...

8 Q. Do you know approximately when  
9 those -- when those discussions would have  
10 started?

11 A. No.

12 Q. And is it -- is it fair to say  
13 that these terms had been discussed with  
14 M.M.B. before this Letter of Intent was sent  
15 over?

16 A. I don't know.

17 Q. Do you know who was involved in  
18 those negotiations?

19 A. Yeah. Of course, I was.

20 Q. And who else?

21 A. Maybe Simon Dushinsky.

22 Q. And the Rabsky Group was  
23 interested in this 99-year ground lease for  
24 the property because it wanted to redevelop  
25 the property with something other than

1 PINCHUS S. ROTTENBERG

2 McDonald's, right?

3 A. They wanted to maximize the  
4 value of the property.

5 Q. So I'll ask the question again.

6 The Rabsky Group was interested  
7 in this property, obtaining a 99-year ground  
8 lease for the property, because it wanted to  
9 redevelop it with something other than a  
10 McDonald's; is that correct?

11 MR. KOH: Objection.

12 A. Any development -- they wanted  
13 to maximize the value to the extent  
14 possible. So yes.

15 Q. So the Rabsky Group wanted to  
16 redevelop the property with something other  
17 than a McDonald's; is that correct?

18 MR. KOH: Objection. You've  
19 asked the question three times now,  
20 please.

21 MR. WALSH: And he hasn't  
22 answered it.

23 MR. KOH: He has. He -- he's not  
24 accepting your characterization, which  
25 he is free to do.

1 PINCHUS S. ROTTENBERG

2 Q. Can you answer that question in  
3 a yes or no answer. You said maybe?

4 A. I said they wanted to maximize  
5 the value to the extent possible on the  
6 site. Whether that means sell --

7 Q. And the Rabsky Group would not  
8 receive any money under McDonald's -- under  
9 this proposal so long as McDonald's is on  
10 the property, right?

11 A. Correct.

12 Q. So the Rabsky Group could not,  
13 let alone maximize, earn any money so long  
14 as McDonald's is on the property, right?

15 A. I don't know.

16 Q. Well, isn't that what we just  
17 looked at, the base rent?

18 A. I don't know. This is what you  
19 see on the document.

20 Q. I'm asking you. You were  
21 involved, right?

22 A. Right.

23 Q. And it says so long as  
24 McDonald's, the McDonald's lease is in  
25 effect, there shall be a direct passthrough

1 PINCHUS S. ROTTENBERG  
2 of the base rent under the McDonald's lease.  
3 And that's what was proposed, right?

4 A. Correct.

5 Q. So long as McDonald's is on the  
6 property the Rabsky Group does not earn any  
7 money off of this property?

8 A. I'm not sure. Maybe. I don't  
9 know. I don't know.

10 Q. You don't know?

11 A. No.

12 Q. Well, are you aware of how they  
13 might possibly? Because we just went through  
14 the org chart and it didn't look like -- you  
15 didn't indicate that M.M.B. -- that the  
16 Rabsky Group or any entity affiliated with  
17 them is a member of M.M.B. Associates.

18 So I'm just trying to understand  
19 how could they earn any money off of this  
20 property under this arrangement that's being  
21 proposed?

22 A. I don't know either.

23 Q. Okay. So you said that they  
24 acquired this property to maximize -- to  
25 maximize what?

1 PINCHUS S. ROTTENBERG

2 A. The value.

3 Q. The value. Can they maximize the  
4 value of this property while McDonald's is  
5 still on the property?

6 A. I don't know.

7 Q. You don't know?

8 A. If they can maximize the value?  
9 I don't know.

10 Q. While McDonald's is on the  
11 property. In your opinion, how can the  
12 Rabsky Group maximize the value of this  
13 property?

14 MR. KOH: Objection. Go ahead.

15 A. By increasing rents, having  
16 higher rents.

17 Q. Okay. But as long as McDonald's  
18 is on the property, the Rabsky Group won't  
19 see any of those rents, right?

20 A. So I am not making that  
21 calculations for kind of -- for Vanderbilt  
22 but...

23 Q. Well, I'm asking you, the Rabsky  
24 Group said that they wanted to acquire this  
25 property to maximize the value of the

1 PINCHUS S. ROTTENBERG

2 property?

3 A. Correct.

4 Q. And I'm asking you in your view,  
5 you know, you're involved in this  
6 negotiation, how would they do that?

7 A. By virtue of rezoning the  
8 property and having a higher rent for the  
9 property being paid. I don't know, many  
10 other things that could happen.

11 Q. But in order for the Rabsky  
12 Group to maximize the value by increasing  
13 rents, the Rabsky Group would need to get  
14 those higher rents, right? Otherwise, they  
15 don't see any value from those higher rents?

16 MR. KOH: Objection. That's a  
17 conclusion which is just not true.  
18 Please continue.

19 MR. WALSH: Well, I'm asking.

20 A. I'm not sure, again.

21 Q. Would one way to maximize the  
22 value of this be to redevelop this property  
23 with something other than McDonald's?

24 A. Yes.

25 Q. Would you agree that this

1 PINCHUS S. ROTTENBERG

2 property is worth more to the Rabsky Group  
3 if McDonald's were to leave the property and  
4 terminate the lease?

5 A. No.

6 Q. Why not?

7 A. It all depends what the rent is  
8 going to be.

9 Q. Okay. But are you aware of the  
10 -- of any of the rent that McDonald's pays  
11 for this property, are you aware that any of  
12 that money goes to the Rabsky Group?

13 A. If I'm aware?

14 Q. Yes. Does any of the rent that  
15 McDonald's pays for this property go to the  
16 Rabsky Group?

17 A. Yeah. You saw the org chart.

18 Q. Right. And the org chart said it  
19 goes to -- let's look at it again, it's  
20 Exhibit 2.

21 M.M.B. Associates has three  
22 members. None of them -- is Vanderbilt  
23 Atlantic Holdings, LLC a member of M.M.B.  
24 Associates, LLC?

25 A. No.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. Is the Rabsky Group a  
3 member of M.M.B. Associates, LLC?

4 A. Not the Rabsky Group. But as you  
5 can see, 840 Atlantic is and 840 Atlantic  
6 Holdings and 840 Atlantic Holdings is a  
7 member of M.M.B.

8 Q. Okay. But the Rabsky Group  
9 isn't on this org chart, is it?

10 A. No.

11 Q. Okay. And Vanderbilt Atlantic  
12 Holdings is below -- is underneath M.M.B.  
13 Associates on that org chart, right?

14 A. Vanderbilt -- again?

15 Q. Vanderbilt Atlantic Holdings is  
16 not a member or at any point, you know,  
17 down the stream a member in any way, shape  
18 or form of M.M.B. Associates; is that right?

19 A. That's correct.

20 Q. Okay. Now, underneath, second  
21 paragraph underneath the base rent, going  
22 back to -- I'm on page VA-16546, back to the  
23 Letter of Intent, it says, "If the property  
24 has not been rezoned prior to McDonald's  
25 vacating the property, the base rent once



1 PINCHUS S. ROTTENBERG

2 McDonald's vacates the property shall be \$10  
3 per the commercial FAR buildable square  
4 footage for the first year with such amount  
5 to increase by 2% per annum thereafter." Do  
6 you see that?

7 A. I do.

8 Q. So can you explain to me what  
9 that means?

10 A. You just read it, right?

11 Q. Well, I'm just asking, what does  
12 that mean to you?

13 A. That the rent should be \$10 a  
14 foot.

15 Q. If the property has not been  
16 rezoned, right?

17 A. Correct.

18 Q. Okay. So do you agree that, at  
19 least for purposes of this agreement or this  
20 proposal, the Rabsky Group was valuing the  
21 property at its current zoning at \$10 per  
22 buildable square foot for the first year?

23 A. I don't know at what they valued  
24 it but this is on the document.

25 Q. But that's what they were

1 PINCHUS S. ROTTENBERG

2 proposing, correct?

3 A. Were proposing, yes.

4 Q. They were proposing if  
5 McDonald's left the property and it had not  
6 been rezoned, then they would pay \$10 per  
7 square foot, according to the current zoning  
8 as of the date of this letter; is that  
9 right?

10 A. Correct.

11 Q. Okay. And in this paragraph, if  
12 it had been rezoned then they would pay a  
13 higher rent, is that correct, when  
14 McDonald's vacates?

15 A. If you saw it. I don't know. I  
16 didn't read it.

17 Q. Well, I'm asking you to look at  
18 the document.

19 A. Which paragraph of the document  
20 are you referring to?

21 Q. 5(b)?

22 A. 5(b)? Same dollars per foot.

23 Q. But it talks about a rezoning.  
24 So presumably there would be a higher  
25 buildable square footage on a rezoning,

1 PINCHUS S. ROTTENBERG

2 right?

3 A. I guess.

4 Q. This buildable square footage  
5 would almost certainly be higher if it's  
6 rezoned, right?

7 A. I don't know.

8 Q. Okay. If you can flip the page  
9 to ending in Bates stamp 547, up toward the  
10 top second full paragraph it says, "If the  
11 property is rezoned and McDonald's has  
12 vacated the property any time after the 10  
13 year period, the base rent shall reset to  
14 the fair market value of the property not to  
15 exceed \$19 per market." I won't read the  
16 rest of the language. Do you see that?

17 A. Again, which paragraph are you  
18 talking about?

19 Q. The second full paragraph on  
20 page ending in Bates 547, "if the property  
21 is rezoned".

22 A. Yeah.

23 Q. So if the property is rezoned  
24 and McDonald's has vacated the property  
25 after -- I guess within ten years of entry

1 PINCHUS S. ROTTENBERG

2 of the lease, then the rent would go to the  
3 fair market value of that property, not to  
4 exceed \$19, right?

5 A. Okay. Yeah.

6 Q. So if McDonald's were to vacate,  
7 according to this proposal, if McDonald's  
8 were to vacate the property within ten years  
9 of entry into the lease, it would pay the  
10 equivalent at least the first year of \$10  
11 per square foot, right?

12 A. Again? Sorry.

13 Q. If McDonald's --

14 A. If the property --

15 Q. Hold.

16 (Pending question is read back  
17 by the reporter.)

18 A. Correct.

19 Q. And if McDonald's doesn't vacate  
20 for more than ten years, then it would be  
21 either the fair market value or up to \$19  
22 per square foot; is that right?

23 A. Correct.

24 Q. So this Letter of Intent would  
25 be to Rabsky Group's benefit, would you

1 PINCHUS S. ROTTENBERG

2 agree, if McDonald's were to vacate the  
3 property within ten years of entry of the  
4 lease proposed by this Letter of Intent?

5 A. It depends what it's rezoned to.

6 Q. What do you mean by that?

7 A. I don't know. I don't know why  
8 you make that assumption. I'm not sure what  
9 --

10 Q. Let me ask, do you know why the  
11 proposal was prepared this way with the ten  
12 years, the two different values?

13 A. I can't recall what was the  
14 basis of this back then.

15 Q. And do you recall why the rent  
16 would be different whether or not McDonald's  
17 had vacated?

18 A. Rent is the same. Isn't the  
19 rent per foot the same?

20 Q. Well, it depends. It depends if  
21 they vacated and it's been rezoned, right?  
22 There's two variables.

23 A. Okay.

24 Q. I'm asking you.

25 A. What is the question?

1 PINCHUS S. ROTTENBERG

2 Q. Are the two variables for the  
3 rent; whether the property has been rezoned;  
4 and whether McDonald's has vacated the  
5 property?

6 A. Yes.

7 Q. Okay. If you could look at the  
8 page ending in Bates stamp 547 under the  
9 header 8, Development.

10 A. Okay.

11 Q. It says, "Following the  
12 expiration of the McDonald's lease tenant  
13 may, at its sole discretion, demolish the  
14 property and constructing new mixed-use  
15 property on the land (defined as the new  
16 building) subject to compliance with  
17 applicable law." Do you see that?

18 A. Yes.

19 Q. Okay. So the Rabsky Group was  
20 negotiating to be able to demolish the  
21 McDonald's and construct a new mixed-use  
22 building as part of this proposal, correct?

23 A. You see whatever is written in  
24 here.

25 Q. I'm asking you; is that correct?

1 PINCHUS S. ROTTENBERG

2 A. I only know what's written in  
3 here.

4 Q. And is that what's written here?

5 A. Well, you can see it.

6 Q. I'm asking you, is that what's  
7 written here?

8 A. This is one of the options.

9 Q. Okay. So they may -- they may  
10 demolish the McDonald's, right, and put a  
11 mixed-use building on there?

12 A. Right.

13 Q. If you can flip to the next page  
14 548, Brokers Commission.

15 A. Yes.

16 Q. It says, "Each landlord and  
17 tenant warrants and represents to the other  
18 that it is not engaged or dealt with any  
19 other broker, salesman, finder or similar  
20 intermediary in connection with the leasing  
21 of the property which may claim a  
22 commission, except for Sam Rottenberg", and  
23 then it continues. Do you see that?

24 A. I do.

25 Q. So were you the broker for this

1 PINCHUS S. ROTTENBERG

2 proposed deal?

3 A. Yes.

4 Q. And what is your commission  
5 arrangement for this?

6 A. None.

7 Q. But it says right here it talks  
8 about a broker's commission and specifically  
9 identifies you as someone who would be  
10 entitled to a commission.

11 A. So there was no commission. It  
12 was zero.

13 Q. So what compensation would you  
14 receive for your brokered services?

15 A. I'm a partner, so...

16 Q. So was that your compensation?

17 A. There wasn't any compensation in  
18 that broker role. So no, there was not.

19 Q. So you did not receive -- your  
20 testimony is you did not receive any  
21 compensation from anybody for brokering this  
22 deal?

23 A. Correct.

24 Q. But as part of this deal you  
25 became or an entity that you control became



1 PINCHUS S. ROTTENBERG

2 a member of M.M.B. Associates?

3 A. Correct -- no, no. Sorry. I take  
4 that back. I'm not sure. What was your  
5 question?

6 (Pending question is read back  
7 by the reporter.)

8 A. That was no relation so this. I  
9 became a member of M.M.B. but there is no  
10 relation to this.

11 Q. So when -- did you become a  
12 member of M.M.B. Associates before or after  
13 this --

14 A. You asked me that question  
15 before and I said I don't remember.

16 Q. But you said just that it's  
17 unrelated. So I'm just trying to understand  
18 the timing. You know --

19 A. I don't remember the timing.  
20 It's unrelated, but I don't remember the  
21 timing.

22 Q. So what was it related to? I  
23 guess I'm just trying to understand. You  
24 know, why did you become a member, why did  
25 that entity become a member of M.M.B.

1 PINCHUS S. ROTTENBERG

2 Associates?

3 A. Because I paid for it. There was  
4 consideration for it.

5 Q. And you don't remember if that  
6 was -- was it around the same time?

7 A. I can't remember, so...

8 Q. And would that have -- would you  
9 have been doing that if you were not a  
10 member of M.M.B. Associates?

11 MR. KOH: Objection. Go ahead.

12 A. I don't know. I can't go back in  
13 time.

14 Q. Would you have done this for  
15 free?

16 MR. KOH: Objection. Go ahead.

17 A. No.

18 Q. Okay. And your testimony is you  
19 were not entitled to a commission?

20 A. I'm not saying that I wasn't  
21 entitled. I didn't collect a commission.  
22 There was no commission. There is no  
23 commission arrangement.

24 Q. Will you ever be entitled to a  
25 commission?

1 PINCHUS S. ROTTENBERG

2 A. I don't know.

3 Q. You don't know?

4 A. No.

5 Q. Are you -- is there a separate  
6 brokerage agreement?

7 A. No.

8 Q. So you're not aware if you're  
9 entitled to a commission for this project at  
10 any point in time?

11 A. No.

12 Q. When this Letter of Intent was  
13 sent over are you aware of whether the  
14 Rabsky Group had considered what rezoning it  
15 may seek in connection --

16 A. No.

17 MR. KOH: Objection.

18 Q. You don't? You're not sure?

19 A. No.

20 Q. Did you know what types of  
21 mixed-use building was referenced in this  
22 building and contemplated by the Rabsky  
23 Group?

24 MR. KOH: Objection.

25 A. No.

1 PINCHUS S. ROTTENBERG

2 Q. Were you aware of -- let me  
3 rephrase.

4 Have you ever reviewed the lease  
5 with McDonald's before this Letter of Intent  
6 was sent?

7 A. I wouldn't remember. I can't  
8 recall.

9 Q. Do you recall when you first saw  
10 the McDonald's lease?

11 A. No.

12 Q. Do you recall when you first  
13 learned about the terms of the McDonald's  
14 lease?

15 A. No.

16 Q. Do you recall ever sharing with  
17 the Rabsky Group --

18 A. No.

19 MR. KOH: Let him finish the  
20 question.

21 Q. Before this Letter of Intent was  
22 submitted, do you recall if you had shared  
23 the terms of the McDonald's lease with the  
24 Rabsky Group?

25 A. No.

1 PINCHUS S. ROTTENBERG

2 Q. Do you think that the terms of  
3 the McDonald's lease would be material  
4 information that's important for the Rabsky  
5 Group to be aware before it sends this  
6 Letter of Intent?

7 MR. KOH: Objection. Go ahead.

8 A. I don't know.

9 Q. Would you consider it material  
10 information if you were going to send a  
11 Letter of Intent like this?

12 A. I don't know.

13 Q. Would you want to know that  
14 McDonald's had the right to be on this  
15 property for another 20 years?

16 A. Of course.

17 Q. You would?

18 A. Of course.

19 Q. So do you believe the Rabsky  
20 Group was aware of that fact when it --

21 A. At the time that they submitted  
22 this offer?

23 Q. Yes.

24 A. No.

25 Q. If you were aware of it would

1 PINCHUS S. ROTTENBERG

2 you have shared that information with them?

3 A. I don't know. It depends on the  
4 setup, it depends if it were to come about  
5 or not.

6 VIDEOGRAPHER: Mr. Rottenberg,  
7 could you do me a favor and move over  
8 to the center of the shot?

9 THE WITNESS: Pardon?

10 VIDEOGRAPHER: Can I just  
11 position you more towards the center  
12 of the shot, could you move over a  
13 bit. I'm losing you in the shot.

14 THE WITNESS: You are losing me?

15 MR. KOH: Move in front of the  
16 camera.

17 THE WITNESS: Okay. There is  
18 nothing to see.

19 Q. So did you -- were you involved  
20 in any discussions with the Rabsky Group  
21 about the possibility that McDonald's might  
22 want to stay on the property until 2039?

23 A. I can't remember.

24 MR. WALSH: Okay. If we could  
25 mark VA-010103, this is the final

1 PINCHUS S. ROTTENBERG

2 lease executed between Vanderbilt and  
3 M.M.B. Associates. It runs through  
4 010196. So that will become P-4.

5 CONCIERGE: 010103?

6 MR. WALSH: Yes. 010103.

7 (Plaintiff Exhibit 4, lease re:  
8 840 Atlantic Avenue, Brooklyn, New  
9 York, Bates VA-010103 was received and  
10 marked on this date for  
11 identification.)

12 CONCIERGE: It should be there  
13 now.

14 Q. Okay. So Mr. Rottenberg, if you  
15 could just open that document? I understand  
16 it's very long --

17 A. 94 pages, my friend.

18 Q. It's 94 pages and --

19 A. You want me to go through that  
20 now?

21 Q. No, not particularly. But I'll  
22 represent to you that this document was  
23 produced to us in this litigation by  
24 Vanderbilt. It's titled The Lease Between  
25 M.M.B. Associates LLC As Landlord and

1 PINCHUS S. ROTTENBERG

2 Vanderbilt Atlantic Holdings, LLC As Tenant.

3 A. Okay. So what is your question,  
4 sir?

5 Q. Just be patient. And this lease,  
6 if you look at the page ending -- it's the  
7 first page of the lease after the table of  
8 contents.

9 A. Which page is it?

10 Q. Ending in 109.

11 A. 109.

12 Q. It's on the bottom.

13 A. Okay. I'm looking at 109.

14 Q. Would you agree it's dated  
15 November 30, 2017?

16 A. That's what the lease says.

17 Q. Okay. Now, were you responsible  
18 for negotiating this lease on behalf of  
19 Vanderbilt Atlantic Holdings as the managing  
20 member?

21 A. I don't know what is  
22 "responsible". I wasn't responsible. The  
23 attorneys were responsible.

24 Q. Well, were you the managing  
25 member of Vanderbilt Atlantic Holdings at



1 PINCHUS S. ROTTENBERG

2 this time?

3 A. Yeah.

4 Q. And you testified earlier that  
5 you have sole discretion to make decisions  
6 on behalf of Vanderbilt Atlantic Holdings,  
7 right?

8 A. Correct.

9 Q. Was anyone else working with you  
10 on behalf of Vanderbilt Atlantic Holdings,  
11 other than attorneys, to negotiate the terms  
12 of this lease?

13 A. I can't remember.

14 Q. Was Simon Dushinsky involved?

15 A. Again, depends on if it happens  
16 to be or not. Possible. I don't know.

17 Q. You don't recall whether he was  
18 involved in negotiating --

19 A. No. I don't know to the extent  
20 of involvement, if involved. So I don't  
21 know.

22 Q. Before days deposition did you  
23 try to review any communications or  
24 documents to determine who was involved with  
25 the negotiation of that lease?

1 PINCHUS S. ROTTENBERG

2 A. Again? I didn't understand the  
3 question.

4 Q. Did you try to review any  
5 documents or communications to determine who  
6 was responsible for negotiating the lease?

7 A. I'm not sure I understand the  
8 question.

9 Q. Did you do any, try to do any  
10 research to determine, before this  
11 deposition, who was responsible for  
12 negotiating the lease on behalf of  
13 Vanderbilt?

14 A. I'm still -- so your question is  
15 whether I did any research now?

16 Q. Before this deposition to try  
17 and refresh your recollection about who was  
18 involved in the negotiation of the lease.

19 A. No.

20 Q. Okay. If we could turn to the  
21 page ending in 128, it's the Rent provision,  
22 Vanderbilt Atlantic Holdings, section 3.

23 A. I'm not sure what you were  
24 showing me on 109.

25 MR. KOH: Mr. Rottenberg, the

1 PINCHUS S. ROTTENBERG

2 way this works is Mr. Walsh gets to  
3 ask the questions today.

4 Q. If you can flip to 128 section  
5 3, Rent.

6 THE WITNESS: I'm sorry, Howard.

7 MR. KOH: That's okay.

8 THE WITNESS: 128, okay.

9 MR. KOH: We can talk about that  
10 at a break or after the deposition is  
11 over.

12 Q. So Fixed Rent 3.1, it says "For  
13 so long as the existing lease is in  
14 effect" --

15 A. Okay.

16 Q. And existing lease, just for the  
17 record, is defined on the page ending in  
18 115, and I'll represent to you that it's the  
19 McDonald's lease. "So for so long as the  
20 existing lease is in effect, tenant shall  
21 pay to landlord as fixed rent and additional  
22 rent, as applicable, the base rent and all  
23 other charges required to be paid by the  
24 existing tenant to landlord under the  
25 existing lease so that there shall be a

1 PINCHUS S. ROTTENBERG

2 direct passthrough of base rent and all  
3 other charges required to be paid by the  
4 existing tenant to landlord under the  
5 existing lease."

6 So am I correct that that  
7 provision requires Vanderbilt Atlantic  
8 Holdings to pay to M.M.B. Associates all  
9 rent that McDonald's pays to Vanderbilt so  
10 long as the McDonald's lease remains in  
11 effect?

12 A. Yes. I see it the same way as  
13 you read it. So yes.

14 Q. And then would you agree that in  
15 the next two sections they discuss what  
16 happens after that McDonald's lease  
17 terminates, McDonald's vacates, correct?

18 A. I have to read it.

19 Q. So it's 3.11 and 3.12.

20 (Deponent reviews the document.)

21 A. So what is your question?

22 Q. Well, so do you agree that 3.11  
23 and 3.12 talk about the rent that will be  
24 owed after McDonald's vacates?

25 MR. KOH: Objection.

1 PINCHUS S. ROTTENBERG

2 A. I don't know.

3 Q. That's why I asked you to read

4 --

5 A. That's if it's rezoned or not  
6 rezoned. That's all I see.

7 Q. At the end of 3.1 the last  
8 sentence is, "From and after the existing  
9 tenant vacate date, fixed rent payable to  
10 the tenant by tenant to landlord under this  
11 lease" --

12 A. I don't know what you're  
13 reading.

14 Q. The very last sentence of  
15 section 3.1 the section we were just  
16 reading.

17 A. Okay.

18 Q. "From and after the existing  
19 tenant vacate date, fixed rent payable by  
20 tenant to landlord under this lease shall be  
21 as set forth in either 3.1 or 3.2 below as  
22 applicable", right? Do you see that?

23 A. Yes. I see that.

24 Q. So 3.11 and 3.12 cover the rent  
25 payable by Vanderbilt after McDonald's

1 PINCHUS S. ROTTENBERG

2 vacates the property, correct?

3 A. That's what the section in 3.1,  
4 you just read it, says.

5 Q. Okay. And am I correct that the  
6 rent that Vanderbilt will owe after  
7 McDonald's vacates is dependent on first,  
8 whether the property has been rezoned; is  
9 that correct?

10 A. I don't know.

11 Q. Well, I'm asking you to review  
12 the document and answer my question. You're  
13 the managing member of Vanderbilt Atlantic  
14 Holdings.

15 A. You're asking me first. I don't  
16 know what is first and what is second.

17 Q. If you could -- if you could  
18 refer back to Exhibit 1, which is the  
19 30(b)(6) deposition notice.

20 A. Exhibit 1?

21 Q. Yes. And go to the very last  
22 page of that, topic 18.

23 A. Okay.

24 Q. And before we get to that, would  
25 you agree that the rent that Vanderbilt pays

1 PINCHUS S. ROTTENBERG

2 under this lease to M.M.B. is a financial  
3 term of the lease?

4 A. I'm not sure I understand the  
5 question. Sorry.

6 Q. Does the rent that Vanderbilt  
7 pays to M.M.B. under its lease with M.M.B.,  
8 that rent, is rent a financial term of that  
9 lease?

10 A. Yes.

11 Q. Okay. Looking back at Exhibit 1,  
12 topic 18, we requested a person  
13 knowledgeable about the financial terms of  
14 the Vanderbilt lease. Do you see that?

15 A. I do.

16 Q. Are you knowledgeable about the  
17 financial terms of the Vanderbilt lease?

18 A. I should be.

19 Q. Are you?

20 A. Again, I'm not sure I remember  
21 all of the -- all of the financial terms.

22 Q. So are you or are you not  
23 knowledgeable of the financial terms of the  
24 Vanderbilt lease?

25 A. Knowledgeable or remember?

1 PINCHUS S. ROTTENBERG

2 Remember, I'm not sure.

3 Q. Knowledgeable. Knowledgeable.

4 A. Yes.

5 Q. Okay. So you're knowledgeable of  
6 the financial terms of the lease?

7 A. Yes.

8 Q. So in advance of your deposition  
9 did you review this lease?

10 A. No.

11 Q. Did you review the financial  
12 terms of the lease?

13 A. I don't think so.

14 Q. Did you do anything in  
15 preparation for this deposition today --

16 A. Yeah. I told you before --

17 Q. Let me finish.

18 Did you do anything in advance  
19 of your deposition today to testify about  
20 the financial terms of the Vanderbilt lease?

21 A. I looked through the documents  
22 that were sent over.

23 Q. That wasn't my question.

24 My question is, did you do  
25 anything specifically to prepare to testify



1 PINCHUS S. ROTTENBERG

2 today about the financial terms of the  
3 Vanderbilt lease?

4 MR. KOH: Are you excluding  
5 meeting with me, Brendan?

6 MR. WALSH: It's a general  
7 question.

8 Q. I want to understand what did  
9 you do -- did you do anything to prepare to  
10 testify on this topic?

11 A. Yeah. I said before. I don't  
12 know about this topic specifically. I can't  
13 talk to that topic specifically.

14 Q. Well, I'm asking you  
15 specifically about this topic.

16 A. I can't answer to that question.  
17 I don't know. I met with Howard and I went  
18 through all the documents that were sent  
19 over.

20 Q. Okay.

21 A. That's what I said before.

22 Q. So you're not aware of any  
23 preparation that you performed in advance of  
24 today to talk about the financial terms of  
25 the Vanderbilt lease?

1 PINCHUS S. ROTTENBERG

2 MR. KOH: Objection.

3 A. About any specific thing, I  
4 can't recall.

5 MR. WALSH: Howard, we're going  
6 to reserve our rights to reopen this  
7 deposition, if necessary.

8 MR. KOH: Okay. I don't think  
9 there's any dispute about the validity  
10 of the documents and I don't think  
11 anybody has alleged that it isn't  
12 somehow clear, but go ahead. You can  
13 reserve your rights.

14 MR. WALSH: I don't necessarily  
15 think it's unclear. Mr. Rottenberg,  
16 I'm asking questions about it, and he  
17 keeps referring me back to it and I'm  
18 just trying to understand, make sure  
19 my understanding of the lease is  
20 correct.

21 Q. So let's go back to the lease,  
22 section 3, Rent. Do you see that on page  
23 ending in 112 on Exhibit P4?

24 A. Exhibit 4, page 128, yes.

25 Q. So this is what we were just

1 PINCHUS S. ROTTENBERG

2 talking about earlier.

3 A. Yes.

4 Q. 3.11 and 3.12 govern the rent  
5 that is owed after McDonald's vacates the  
6 property, right?

7 A. Again, that's what 3.1 says,  
8 correct.

9 Q. So that's correct. And am I  
10 correct that the rent that Vanderbilt pays  
11 after McDonald's leaves the property is  
12 dependent on whether the property has been  
13 rezoned; is that correct?

14 A. Yes.

15 Q. And when the rezoning occurs; is  
16 that correct?

17 A. Yes.

18 Q. And under section 3.12, if the  
19 property is rezoned within the first ten  
20 years of this Vanderbilt lease, Vanderbilt  
21 will pay \$10 per buildable square foot,  
22 correct?

23 A. Yes.

24 Q. And if the property is rezoned  
25 and McDonald's, you know, leaves after ten

1 PINCHUS S. ROTTENBERG

2 years from the time the lease is entered,  
3 Vanderbilt pays a different amount of rent,  
4 the fair market value, correct?

5 A. Where are you reading this?

6 Q. It's section 3.12. I'm just  
7 trying to make sure I understand that this  
8 is correct. Maybe just take a moment to read  
9 3.12.

10 A. Yeah.

11 (Deponent reviews the document.)

12 VIDEOGRAPHER: Counsel, when you  
13 reach a convenient point?

14 MR. WALSH: Sure.

15 Q. Tell me when you've read 3.12.

16 A. Yeah. I read it.

17 Q. Okay. So am I correct that if  
18 the property is rezoned and McDonald's  
19 vacates after ten years from the date of the  
20 lease, so after November 30, 2027, then the  
21 rent will be determined by the fair market  
22 value of the property, an increase by 2% per  
23 year, with the fair market value not to  
24 exceed \$19 per buildable square foot?

25 A. Correct.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. But if McDonald's were to  
3 vacate the property before ten years, before  
4 2027, Vanderbilt would pay -- and there's a  
5 rezoning -- Vanderbilt would pay \$10 per  
6 buildable square foot; is that correct?

7 A. Correct.

8 Q. Okay. So under 3.11 and 3.12 if  
9 McDonald's were to vacate the property  
10 tomorrow, what rent would Vanderbilt be  
11 required to pay to M.M.B. Associates?

12 MR. KOH: Objection. Go ahead.

13 A. I don't know.

14 Q. Is that a financial term of the  
15 lease?

16 A. Yes, it is.

17 Q. Okay. So I'm asking you as the  
18 corporate representative of Vanderbilt, who  
19 has been brought here to testify about,  
20 among other things, the financial terms of  
21 the Vanderbilt lease, if you could tell me  
22 -- or at least tell me how would it be  
23 calculated?

24 A. You just look at the lease and  
25 see how it's calculated. I can't -- I can't

1 PINCHUS S. ROTTENBERG

2 sit here -- again, what was the question?

3 Sorry.

4 Q. If McDonald's vacated the  
5 property tomorrow what rent would Vanderbilt  
6 be required to pay M.M.B. Associates?

7 MR. KOH: Same objection.

8 Q. Can you at least tell me how it  
9 would be calculated?

10 MR. KOH: That's a different  
11 question. Go ahead.

12 A. It's like -- yeah, \$10 a foot.

13 Q. Under current zoning, correct?

14 A. Correct.

15 Q. So if Vanderbilt -- so if  
16 McDonald's vacates the property tomorrow,  
17 Vanderbilt would have to pay M.M.B.  
18 Associates \$10 per buildable square foot  
19 under its current zoning; is that correct?

20 A. Yes.

21 Q. How many buildable square feet  
22 are on the property?

23 A. I can't remember exactly but  
24 like 35,000 or so.

25 Q. You're close. I believe it's

1 PINCHUS S. ROTTENBERG

2 36,000.

3 Assuming it's 36,000, what  
4 annual rent would Vanderbilt pay M.M.B.  
5 Associates if McDonald's were to vacate the  
6 property tomorrow?

7 A. Whatever \$10 plus 2% increase is  
8 from the day the lease was signed,  
9 equivalent.

10 Q. So it would be \$360,000 for the  
11 first year increasing by 2%, correct?

12 A. Yeah.

13 MR. WALSH: Can we just take a  
14 five minute break?

15 MR. KOH: Fine with me.

16 VIDEOGRAPHER: We're off at  
17 11:38 a.m. and this marks the end of  
18 media 1.

19 (Recess is taken.)

20 VIDEOGRAPHER: We are back on  
21 the record at 11:50 a.m. This is the  
22 start of media 2.

23 Q. Mr. Rottenberg, as part of the  
24 lease that Vanderbilt entered into with  
25 M.M.B. Associates, M.M.B. Associates

1 PINCHUS S. ROTTENBERG

2 assigned to Vanderbilt all of M.M.B.'s  
3 rights and interests in the McDonald's  
4 lease; isn't that correct?

5 A. Yes.

6 Q. And that assignment and  
7 assumption of lease was memorialized in a  
8 different agreement, correct?

9 A. I don't know.

10 Q. Let me ask you this, do you  
11 know, was there any separate consideration,  
12 aside from what may be included in the  
13 lease, separate consideration paid for that  
14 assignment and assumption of lease, the  
15 McDonald's lease?

16 A. Not that I'm aware of.

17 Q. Do you know?

18 A. No.

19 Q. Who would know?

20 A. I don't know.

21 Q. Would Simon Dushinsky know?

22 A. No.

23 Q. Would Tom Li know?

24 A. No. If anybody, I should know.

25 Q. But you don't know?



1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Okay.

4 A. I don't think so, as I said.

5 Q. Well, you do or you don't.

6 MR. WALSH: So if we can mark  
7 VA-021570. It's a document that spans  
8 to Bates stamp 021588 and I believe  
9 that will be P-5.

10 (Plaintiff Exhibit 5, email  
11 string dated last November 21, 2017,  
12 Bates VA-21570 was received and marked  
13 on this date for identification.)

14 CONCIERGE: There isn't a  
15 021570. There is no zero at the front  
16 of it.

17 MR. WALSH: I'm sorry. Let me  
18 just confirm that's probably the same  
19 document. Yes. That's it. My  
20 apologies.

21 Q. So the exhibit is now in Exhibit  
22 Share. It's been identified as P-5.

23 Mr. Rottenberg, if you can just  
24 please open up that document. It's an email  
25 chain with an attachment.

1 PINCHUS S. ROTTENBERG

2 A. That's Exhibit 5, right?

3 Q. Correct.

4 A. Okay.

5 Q. So it's an email chain that  
6 starts with from Devora Mondrowitz with a  
7 Reliable Abstract email address and it's  
8 sent to a number of people. You're cc'd on  
9 there. There are a couple of attachments, an  
10 image 001.JPG and ACRIS memo of lease.PDF.  
11 Do you see that?

12 A. Yes.

13 Q. So who are -- who is Devora  
14 Mondrowitz? What was her role?

15 A. The title company.

16 Q. She didn't represent either  
17 party, she just worked for the title  
18 company?

19 A. Yeah.

20 Q. And how about Brad Bassuk?

21 A. He is the attorney for  
22 Vanderbilt Holdings.

23 Q. And how about --

24 A. Sorry. He's the attorney for  
25 M.M.B.

1 PINCHUS S. ROTTENBERG

2 Q. So Brad was the attorney for  
3 M.M.B.?

4 A. A-hum.

5 Q. Okay. Now, when this -- when the  
6 lease was being negotiated did you ever have  
7 the opportunity to consult with Brad Bassuk?

8 A. I don't know consult. I talked  
9 to him.

10 Q. But did you -- did you think  
11 that he was representing your interests in  
12 that transaction?

13 A. No. He represented Vanderbilt.

14 Q. But you, an entity that you  
15 control, is a member of M.M.B., right?

16 A. Yeah.

17 Q. Okay. So if you weren't  
18 consulting with him, is it fair to conclude  
19 from that that you -- your entity did not  
20 become a member of M.M.B. until after this  
21 transaction concluded?

22 MR. KOH: Objection. Go ahead.

23 A. I'm not sure. I'm not sure I  
24 understood the question. What is the  
25 question?

1 PINCHUS S. ROTTENBERG

2 Q. So let me just put it this way,  
3 you're currently a member of Vanderbilt  
4 Atlantic Holdings, correct?

5 A. Right.

6 Q. An entity that you control is  
7 also currently a member of M.M.B.  
8 Associates, correct?

9 A. Yes.

10 Q. Okay. And this is a transaction  
11 between Vanderbilt and Atlantic -- I'm sorry  
12 Vanderbilt Atlantic and M.M.B. Associates,  
13 correct?

14 A. Correct. Correct.

15 Q. Two entities that you're  
16 affiliated with?

17 A. Correct.

18 Q. Were you -- when the transaction  
19 was being negotiated were you at the time on  
20 both sides of the negotiations or only on  
21 behalf of Vanderbilt?

22 A. On behalf of Vanderbilt.

23 Q. So you were not involved at the  
24 time with any of the negotiations with  
25 M.M.B.?

1 PINCHUS S. ROTTENBERG

2 A. Yeah, I was.

3 Q. As a member of M.M.B.?

4 A. I don't know at which role. I  
5 just was involved without any specific role.

6 Q. So at the time -- I guess what  
7 I'm trying to understand is, at the time of  
8 this transaction, were you on both sides of  
9 the transaction or on only the Vanderbilt  
10 side of the transaction?

11 A. I was on the Vanderbilt side of  
12 the transaction.

13 Q. Only?

14 A. I don't know what means "only".  
15 I was on Vanderbilt.

16 Q. So you can't answer that  
17 question?

18 A. What is the question? I was on  
19 the Vanderbilt side of the transaction. That  
20 is my answer.

21 Q. Were you also on the M.M.B. side  
22 of the transaction?

23 A. Yeah. I might have been an  
24 interest in the M.M.B. side. But for this  
25 transaction I was on the Vanderbilt side.

1 PINCHUS S. ROTTENBERG

2 Q. Only; is that correct?

3 A. I don't know. I can't remember  
4 it was only or not only.

5 Q. Okay. So if you could turn to  
6 the third page of that email chain that's  
7 ending in Bates stamp 572, at the very  
8 bottom, the last part of that page.

9 A. Yup.

10 Q. It's an email dated November 21,  
11 2017 from Murray Schneier.

12 A. A-hum.

13 Q. At Reliable Abstract and Rivky  
14 Sicherman.

15 A. Okay.

16 Q. Who is Rivky Sicherman?

17 A. I don't know.

18 Q. And Murray Schneier was  
19 Vanderbilt's counsel?

20 A. Was representing Vanderbilt.

21 Q. Okay. What is -- and so it says,  
22 "We need the ACRIS" -- that's A-C-R-I-S, "We  
23 need the ACRIS forms done ASAP for the  
24 ground lease transaction. This is holding up  
25 our deal. The FMV is \$10 million, so estate

1 PINCHUS S. ROTTENBERG

2 transfer tax is \$40,000 and no NYC tax on  
3 ground leases but have to fill out form.  
4 Please call me when you are in. Thanks,  
5 Murray." Do you see that?

6 A. I do.

7 Q. And the subject is 840 Atlantic  
8 Avenue, correct?

9 A. Yes.

10 Q. Okay. So how did Vanderbilt's  
11 attorney come up with the \$10 million FMV  
12 for the ground lease transaction?

13 MR. KOH: Objection.

14 A. I don't remember, sir.

15 Q. So you don't know?

16 A. I don't remember.

17 Q. Did you do anything in advance  
18 of your deposition to prepare to answer  
19 questions on this topic?

20 A. No. I reviewed this document but  
21 that's the extent of it.

22 Q. So you viewed the document?

23 A. Yup.

24 Q. Okay. By the way, what is an  
25 ACRIS form?

1 PINCHUS S. ROTTENBERG

2 A. To the extent I know, it's a  
3 recording document for the City.

4 Q. And does that form require the  
5 amount of consideration paid for a ground  
6 lease to be relisted?

7 MR. KOH: Objection. Answer to  
8 the extent you know.

9 A. I don't know.

10 Q. Okay. So if you could turn to  
11 the first page of that email, which is the  
12 page ending in 21570, the second email down  
13 from Brad Bassuk.

14 A. Yes.

15 Q. And you're copied on this  
16 Lehman, correct?

17 A. Yes.

18 Q. It says, "Devora, please revise  
19 the consideration to 7 million instead of 10  
20 million and send revised ACRIS forms ASAP."  
21 Do you see that?

22 A. I do.

23 Q. So the consideration was changed  
24 to \$7 million, correct?

25 MR. KOH: Objection. Go ahead.



1 PINCHUS S. ROTTENBERG

2 A. That's what I see. I don't  
3 remember. I don't remember.

4 Q. Okay. Do you remember how or why  
5 that number changed from 10 million to 7  
6 million?

7 A. No, sir.

8 Q. Were you involved in those  
9 discussions?

10 A. I don't remember.

11 Q. Who would have been?

12 A. I would.

13 Q. And you don't remember why a \$3  
14 million change was made?

15 A. No.

16 Q. Did Vanderbilt have any  
17 appraiser or a broker involved at that point  
18 that was valuing it?

19 A. I don't think so.

20 Q. But you're a broker, right?

21 A. Yeah.

22 Q. And you feel like you have  
23 pretty good knowledge of New York City real  
24 estate, correct?

25 A. I don't know.

1 PINCHUS S. ROTTENBERG

2 Q. You don't know?

3 A. No.

4 Q. Okay.

5 A. You have people say -- say you  
6 do and you have people say you have no clue  
7 what you're talking about.

8 Q. Did you object to the change  
9 from 10 million to 7 million?

10 A. If I objected to it?

11 Q. Yeah. Did you object?

12 A. No.

13 Q. Did anyone from Vanderbilt  
14 object?

15 A. I don't think so.

16 Q. So Vanderbilt agreed that the \$7  
17 million was the consideration that should be  
18 reported to the City for purposes of the  
19 value of the ground lease, the 99-year  
20 ground lease, correct?

21 A. That's what the documents say.

22 Q. And Vanderbilt wouldn't  
23 knowingly misrepresent the value, would it?

24 A. I don't know. I hope not.

25 Q. You're not sure if it would

1 PINCHUS S. ROTTENBERG

2 knowingly misrepresent the value?

3 A. They would not.

4 MR. WALSH: Okay. If we could  
5 mark 2017.11.30, Memorandum of Lease  
6 of Vanderbilt, and that will be P-6.

7 (Plaintiff Exhibit 6, Memorandum  
8 of Lease of Vanderbilt, was received  
9 and marked on this date for  
10 identification.)

11 Q. Mr. Rottenberg, if you can open  
12 up P-6.

13 A. Yes.

14 Q. And this is a document that we  
15 obtained from a public records search. It's  
16 a document that was filed with the City of  
17 New York. It's a six-page document. First  
18 page says Recording and Endorsement cover  
19 page and then it has a Memorandum of Lease  
20 attached. Do you see that document?

21 A. I do. Ten pages, right?

22 Q. It looks like it's six pages.  
23 Sorry. 10 pages.

24 A. Okay.

25 Q. And you agree that this is --

1 PINCHUS S. ROTTENBERG

2 this was filed with the City to --

3 A. Yes.

4 Q. -- to record the lease between  
5 Vanderbilt and M.M.B. for the property at  
6 840 Atlantic Avenue; is that right?

7 A. That's right.

8 Q. Okay. And what amount of  
9 transfer tax is paid according to this -- or  
10 what does this form indicate the transfer  
11 tax that was paid for that lease? It's on  
12 the bottom.

13 A. I don't know.

14 Q. Do you see on the bottom right  
15 where it says NYS Real Estate Transfer Tax  
16 \$28,000?

17 A. I'm trying to look.

18 MR. KOH: First page.

19 THE WITNESS: First page?

20 Q. First page, bottom right.

21 A. Okay. The filing fee of 100  
22 bucks.

23 Q. 100 bucks filing fee and \$28,000  
24 in New York State real estate transfer tax,  
25 right?

1 PINCHUS S. ROTTENBERG

2 A. Yup.

3 Q. And so --

4 A. And recording fees of \$63.

5 Q. And so the transfer tax that was  
6 paid for this lease was based on a \$7  
7 million valuation; isn't that correct?

8 A. Correct.

9 Q. And Vanderbilt believed that to  
10 be an appropriate and correct valuation,  
11 correct?

12 A. I don't know.

13 Q. You don't know?

14 A. I don't know. This is what was  
15 then, so I don't know. I don't know what  
16 that has to do with valuation. I don't know.

17 Q. So Vanderbilt wouldn't knowingly  
18 file false information with any governmental  
19 entity, would it?

20 A. No.

21 Q. Okay. So is it fair to assume  
22 then that Vanderbilt at the time had filed  
23 -- or that this form was filed it believed  
24 \$7 million for the 99-year ground lease was  
25 correct and appropriate?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Why not?

4 A. I don't know why not. Because --  
5 I don't know whether they thought that  
6 that's the value. This was the transaction  
7 -- I don't know. What is the consideration  
8 that was recorded?

9 Q. Well, what do you mean by "they  
10 thought the value was"? Aren't you  
11 Vanderbilt?

12 A. Yes. So I don't know whether the  
13 attorneys or among the parties, I don't know  
14 how they came to that conclusion. There is  
15 evidence that they thought that's the value  
16 back then. That's all I'm saying.

17 Q. I'm asking you, as the managing  
18 member of Vanderbilt --

19 A. So as I told you, I don't  
20 remember what was the discussion back then.

21 Q. Are you authorized to sign  
22 documents on behalf of Vanderbilt?

23 A. Yes, sir.

24 Q. Okay. Who else is?

25 A. Simon Dushinsky.

1 PINCHUS S. ROTTENBERG

2 Q. Anyone else?

3 A. Tom Li.

4 Q. Okay. And as the managing  
5 member do they have to clear with you before  
6 they sign anything on behalf of Vanderbilt?

7 A. Yeah. I mean not everyone, but  
8 yeah.

9 Q. What do you mean "not everyone"?

10 A. I don't think Simon does have to  
11 but, yes.

12 Q. Even though -- so he can sign  
13 documents without consulting with you?

14 A. He could but he -- I don't know.  
15 Yeah, they consult with me.

16 Q. So could Simon Dushinsky bind  
17 Vanderbilt without consulting with you?

18 A. Pardon?

19 Q. Could Simon Dushinsky bind  
20 Vanderbilt --

21 A. Which word are you using?

22 Q. Let me finish my question.

23 Can he bind Vanderbilt without  
24 consulting with you?

25 A. I'm not sure I heard that word

1 PINCHUS S. ROTTENBERG

2 that you are using. What is that word?

3 MR. KOH: You are referring to  
4 bind, b-i-n-d.

5 MR. WALSH: Correct.

6 A. I'm not sure that I understand  
7 the question. What does it mean somebody can  
8 bind somebody?

9 Q. Can he make promises and  
10 agreements on behalf of Vanderbilt without  
11 consulting with you?

12 A. No.

13 Q. Who would know about the \$7  
14 million valuation or where that came from?

15 A. I would.

16 Q. Nobody else?

17 A. No, except maybe attorneys and  
18 the title company.

19 Q. Are you aware of any other  
20 documents that may exist that -- that would  
21 indicate how that \$7 million valuation was  
22 created?

23 A. No.

24 MR. WALSH: Okay. I'd like to  
25 mark VA-21304, it's a two-page



PINCHUS S. ROTTENBERG

document ending in 305 and starts with  
an email from Tony@CTNYC.com dated  
February 10, 2017 to  
Sam.Rottenberg@email.com, Subject:  
FW: Atlantic. If you can pull that up.

(Plaintiff Exhibit 7, email  
string last dated February 10, 2017,  
Bates VA-21304 was received and marked  
on this date for identification.)

Q. So this is a two-page document.

Do you see that, Mr. Rottenberg?

A. Yes. Exhibit 7, right?

Q. Correct.

A. What is the question?

Q. If you can just take a moment  
and review this and just let me know when  
you've had a chance to familiarize yourself  
with this document.

A. So what is the question?

Q. So who is Adam Rothkrug?

A. That's an attorney.

Q. And who does he represent?

A. Nobody that I'm aware of.

Q. So do you know -- and then how

1 PINCHUS S. ROTTENBERG

2 about PJoel@AOL.com?

3 A. That's a -- is that Philip  
4 Kramer maybe?

5 Q. Well, I'm asking you.

6 A. Yeah, I guess. I don't know. It  
7 says Phil/Tony so...

8 Q. And does this -- the subject is  
9 Atlantic Avenue. Does this email concern 840  
10 Atlantic Avenue?

11 A. Not only 840 Atlantic Avenue.

12 Q. But does it concern, among other  
13 properties, 840 Atlantic Avenue?

14 A. Yeah.

15 Q. And this is dated February 2017  
16 which is nine months before Vanderbilt  
17 entered into its lease with M.M.B., right?

18 A. Okay.

19 Q. I'm asking you; is that right?

20 A. That's what is in the email.

21 Q. So you, February of 2017, were  
22 already working with Tony Musto on  
23 discussions with City Planning and the  
24 Community Board about 840 Atlantic Avenue,  
25 right?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Isn't that what this email  
4 suggests, there is discussions with the City  
5 Planning?

6 A. Discussions, but it wasn't -- I  
7 wasn't working with him.

8 Q. Okay. So you were having  
9 discussions with Tony about potential  
10 meetings with the Community Board and City  
11 Planning about 840 Atlantic Avenue; is that  
12 right?

13 A. I had multiple discussions with  
14 Tony Musto about various things and maybe  
15 that was one of them.

16 Q. So are you aware of any  
17 discussions or communications with either  
18 City Planning or the local Community Board  
19 about 840 Atlantic Avenue before November  
20 2017?

21 A. I wouldn't know dates.

22 Q. So you don't know?

23 A. I don't know the dates, no.

24 Q. Do you recall if you were having  
25 discussions with City Planning and either

1 PINCHUS S. ROTTENBERG

2 the Community Board or members of the  
3 Community Board about 840 Atlantic Avenue  
4 before Vanderbilt entered into its lease  
5 with M.M.B.?

6 A. No. I wouldn't recall.

7 Q. Doesn't this -- wouldn't you  
8 agree that this document suggests that that  
9 was, in fact, happening in February 2017?

10 MR. KOH: Objection. Go ahead.

11 A. That what was happening?

12 Q. That those discussions, so there  
13 were some discussions between City Planning,  
14 potentially the Community Board or members  
15 of the Community Board, about 840 Atlantic  
16 Avenue?

17 A. I don't know. Again, what is  
18 your question; if I had conversations?

19 Q. Are you aware of any  
20 conversations by anyone or communications  
21 about discussions that anyone was having  
22 with City Planning or a Community Board  
23 about the property at 840 Atlantic Avenue  
24 before November 2017?

25 A. Again, I would never know dates

1 PINCHUS S. ROTTENBERG

2 and I would never know who would have  
3 conversations.

4 Q. But this email dated February  
5 2017, this doesn't refresh your recollection  
6 at all? It's talking about, for example, in  
7 the second email down --

8 A. It refreshes my recollection  
9 about this email and about Adam Rothkrug but  
10 that is the extent of it, but it doesn't  
11 refresh my recollection who had  
12 conversations with any of these parties,  
13 City Planning or Community Board or anything  
14 else, so...

15 Q. Okay. Do you know if the Rabsky  
16 Group, if you were working at all with the  
17 Rabsky Group in February of 2017 when Tony  
18 Musto sent you this email chain?

19 A. If I was working with the Rabsky  
20 Group in general?

21 Q. Yes, about 840 Atlantic Avenue.

22 A. I don't remember.

23 Q. Do you remember why Tony Musto  
24 forwarded this email to you?

25 MR. KOH: Objection.

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. But you were having discussions  
4 with Tony about 840 Atlantic Avenue at this  
5 time, right?

6 A. Again, as I said to you before,  
7 I had multiple conversations with Tony Musto  
8 about multiple things. And this could  
9 definitely be one of them, so...

10 MR. WALSH: If we can mark  
11 VA-010383.

12 CONCIERGE: 010383?

13 MR. WALSH: Correct. It's a  
14 five-page document, I believe five  
15 pages ending in 388. It's an email  
16 chain.

17 (Plaintiff Exhibit 8, email  
18 string last dated January 17, 2018,  
19 Bates VA-010383 was received and  
20 marked on this date for  
21 identification.)

22 CONCIERGE: It's been uploaded.

23 MR. WALSH: I can't see the  
24 witness on the big screen. I don't  
25 know if that can be fixed.

1 PINCHUS S. ROTTENBERG

2 VIDEOGRAPHER: I put him back to  
3 spotlight. There is some glitch. I  
4 don't know why it's falling off like  
5 that.

6 THE WITNESS: I'm glad somebody  
7 wants to see me big.

8 Q. So this is an email chain that  
9 you're copied on going back in January 2018.  
10 Do you see that?

11 A. Yeah.

12 Q. Okay. And it looks like they're  
13 attaching an engagement letter of Slater &  
14 Beckerman 840 Atlantic 1.11.18.pdf. Do you  
15 see that?

16 A. Yeah.

17 Q. And if you go to the back of  
18 that document, there is a three-page  
19 engagement letter between is Slater &  
20 Beckerman and the Rabsky Group in connection  
21 with 840 Atlantic Avenue, Brooklyn, New  
22 York. Do you see that?

23 A. Yes, I do.

24 Q. So in January of 2018 the Rabsky  
25 Group retained a lobbying firm to represent

1 PINCHUS S. ROTTENBERG

2 it in connection with 840 Atlantic Avenue,  
3 right?

4 MR. KOH: Objection.

5 Q. I didn't get your answer.

6 A. I guess this is what you see.

7 Q. I'm asking you; is that correct?

8 A. Whatever the document says, yes.

9 Q. Well, I'm asking you if that's  
10 correct. I'm not asking what the document  
11 says.

12 MR. KOH: The nature of the  
13 objection was the characterization of  
14 Slater & Beckerman as a lobbying firm.

15 A. Yeah. So they hired an attorney.  
16 That's what I see.

17 Q. Okay. If you can flip to the  
18 last page of that agreement titled Lobbying  
19 Agreement, do you see that?

20 A. I do.

21 Q. So Slater & Beckerman was hired,  
22 at least in part, to lobby on behalf of the  
23 Rabsky Group, right?

24 A. What do you mean "in part"?

25 Q. Well, you seem to be disputing



1 PINCHUS S. ROTTENBERG

2 my characterization of this as a lobbying  
3 agreement, but I'm looking at a document  
4 entitled Lobbying Agreement and I'm  
5 wondering if Slater & Beckerman was hired by  
6 the Rabsky Group to lobby for 840 Atlantic  
7 Avenue in January of 2018?

8 A. I guess I confirm what the  
9 document says.

10 Q. So is that correct or is it not  
11 correct?

12 A. That's correct.

13 Q. Thank you. And why did the  
14 Rabsky Group need lobbyists for 840  
15 Atlantic?

16 MR. KOH: Objection.

17 A. I don't know.

18 Q. Who would know?

19 A. I would.

20 Q. Okay. Anyone else?

21 A. I don't think so.

22 Q. And as you sit here today, you  
23 don't know why Vanderbilt entered into a  
24 lobbying agreement for --

25 A. No. I don't know.

1 PINCHUS S. ROTTENBERG

2 MR. KOH: Objection. Vanderbilt  
3 did not enter into a lobbying -- this  
4 lobbying agreement.

5 Q. Do you know why the Rabsky Group  
6 would have entered into a lobbying agreement  
7 for 840 Atlantic Avenue?

8 A. No.

9 Q. You're copied on these emails,  
10 right?

11 A. Yes.

12 Q. Okay. Were you -- did you object  
13 to the Rabsky Group entering into a lobbying  
14 agreement for 840 Atlantic Avenue?

15 A. No.

16 Q. But you said that no one else  
17 would know about this, other than you,  
18 right?

19 A. Correct.

20 Q. Okay. Would the lobbying firm  
21 have been hired to assist in getting a  
22 rezoning for 840 Atlantic Avenue?

23 A. I don't know.

24 Q. If you could look at the first  
25 page of that letter agreement dated -- I'm

1 PINCHUS S. ROTTENBERG

2 sorry -- ending in 386, do you see where it  
3 says, "Scope of Representation: The firm  
4 will advise and represent the client in  
5 rezoning of the premises for greater  
6 density." Do you see that?

7 A. Yeah.

8 Q. Does that refresh your  
9 recollection about why Slater & Beckerman  
10 was hired to lobby for 840 Atlantic Avenue?

11 A. It refreshes my recollection  
12 that this is why they hired an attorney.  
13 That's the reason they hired an attorney. I  
14 don't know --

15 Q. But they weren't lobbyists, is  
16 that what you are saying?

17 A. No. I said I don't know what the  
18 other part of it. That's all I'm saying.

19 Q. So why would attorneys have been  
20 hired then?

21 A. It says here, "to engage the  
22 firm to advise and represent in connection  
23 with the premises located at 840 Atlantic  
24 Avenue." That's what I read in the first  
25 paragraph of this document.

PINCHUS S. ROTTENBERG

MR. WALSH: Now, if we can mark  
a document VA-49382 as P-9.

(Plaintiff Exhibit 9, minutes of  
the Community Board M-CROWN  
Subcommittee dated April 30, 2018,  
Bates VA-49382 was received and marked  
on this date for identification.)

Q. Just to circle back, is there  
any reason why the Rabsky Group would have  
retained that firm other than to do work on  
behalf of Vanderbilt Atlantic Holdings?

MR. KOH: Objection. Go ahead  
and answer.

A. I'm not sure I understand the  
question. I'm sorry.

Q. Well, the Rabsky Group entered  
into that lobbying agreement but would you  
agree that that was really for the interests  
of Vanderbilt Atlantic Holdings?

A. I don't know what Rabsky Group's  
relationship was with that law firm.

Q. But you were copied on those  
emails and you're not affiliated with the  
Rabsky Group other than with Vanderbilt

1 PINCHUS S. ROTTENBERG

2 Atlantic Holdings, right?

3 A. Correct.

4 Q. Okay. So if you could look at  
5 P-8 --

6 A. P-8 or P-9?

7 Q. I'm sorry. P-9, it's a two-page  
8 document VA-049132 to 33. It's entitled  
9 Community Board Housing Committee M-CROWN  
10 Subcommittee Minutes from a meeting on  
11 4/30/2018. Do you see that?

12 A. I do.

13 Q. And if you look at the list of  
14 attendees, do you see Tony Musto's name on  
15 there?

16 A. I do.

17 Q. And Sam Rottenberg on there?

18 A. Rottenberg, Sam, yes.

19 Q. So you attended in April 2018  
20 this M-CROWN Subcommittee Meeting of the  
21 Community Board, right?

22 A. Yes.

23 Q. What is the M-CROWN  
24 Subcommittee?

25 A. It's a rezoning that -- I don't

1 PINCHUS S. ROTTENBERG

2 know -- that the community has been working  
3 on, an M-CROWN zoning.

4 Q. So why did you attend that  
5 meeting with Tony Musto?

6 A. Because I was meeting with Tony  
7 Musto, I was talking to him and he went  
8 there, so I went along.

9 Q. And so you were there because  
10 you -- you were there on behalf of  
11 Vanderbilt for 840 Atlantic Avenue; is that  
12 right?

13 A. No. This was just in general, we  
14 always try to talk about various things and,  
15 you know...

16 Q. You just went to the meetings --

17 A. And the rezoning, the M-CROWN  
18 rezoning was another topic that we wanted to  
19 see what's -- what's there.

20 Q. And would M-CROWN rezoning  
21 impact 840 Atlantic Avenue?

22 A. Yes.

23 Q. And how would it impact it?

24 A. 840 Atlantic Avenue is part of  
25 the M-CROWN map rezoning.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. So if the M-CROWN rezoning  
3 were to go through, would the zoning for 840  
4 Atlantic Avenue be changed?

5 A. Yes.

6 Q. And how would it be changed?

7 A. I don't know.

8 Q. Would it allow for more density?

9 A. Yes.

10 Q. How much more density?

11 A. I don't know.

12 Q. Would it be high density?

13 A. I don't know what is high  
14 density. High density in Manhattan is  
15 different than here, so I don't know.

16 Q. How about here high density here  
17 in Brooklyn, this neighborhood?

18 A. I don't know.

19 Q. But a lot more density than is  
20 currently permitted on the property, right?

21 A. I don't know the definition of  
22 "a lot more density". More density -- more  
23 density than what it is today.

24 Q. Okay. Are you working on any  
25 other properties or at that time were you

1 PINCHUS S. ROTTENBERG

2 working on any other properties that had --  
3 that were within the M-CROWN zone?

4 A. I don't remember.

5 Q. How about now?

6 A. Like what?

7 Q. I'm just trying to understand if  
8 there was any other reason, other than 840  
9 Atlantic Avenue, for you to be at that  
10 meeting. Can you think of one?

11 A. Oh, yeah. I'm a real estate  
12 broker. So I always kind of look at  
13 properties and this is what I do, of course.

14 Q. Okay.

15 A. So I'm always interested in  
16 stuff like this. I think that a lot of  
17 people on this list are brokers.

18 Q. But you don't remember why you  
19 were there?

20 MR. KOH: Objection. Go ahead.

21 Q. You don't remember why you were  
22 there?

23 A. No. That's -- that's the kind of  
24 conversations with Tony along with having an  
25 interest on just the M-CROWN framework.



1 PINCHUS S. ROTTENBERG

2 MR. WALSH: Okay. If we could  
3 mark VA-010453. It's a three-page  
4 document ending in 455. That will be  
5 P-10.

6 (Plaintiff Exhibit 10, email  
7 string last dated May 29, 2018, Bates  
8 VA-010453 was received and marked on  
9 this date for identification.)

10 Q. It's up on Exhibit Share if you  
11 can open that up. Do you have it open?

12 A. It's loading. Exhibit 10?

13 Q. Correct.

14 A. Yes.

15 Q. So it's an email from you to Tom  
16 Li dated May 29th, 2018, Atlantic Meeting  
17 No. 1 Notes and there is an attachment. Do  
18 you see that?

19 A. I see it. Okay.

20 Q. And you're forwarding an email  
21 that you had received from Eugene Mekhtiyev.  
22 Do you see that?

23 A. I do.

24 Q. Who is -- and he's an architect?

25 A. Yes.

1 PINCHUS S. ROTTENBERG

2 Q. Is he an architect that -- that  
3 was doing work on behalf of Vanderbilt?

4 A. Yes.

5 Q. And what type of architectural  
6 work was he or his firm doing in May 2018?

7 A. Designing 840 Atlantic Avenue.

8 Q. And do you recall what those  
9 designs consisted of?

10 A. Building development.

11 Q. What kind of development? A  
12 mixed-use building?

13 A. Yes.

14 Q. With hundreds of residential  
15 units?

16 A. Yes.

17 Q. Okay. And so in May of 2018  
18 Vanderbilt was meeting with the Department  
19 of City Planning about specific plans for a  
20 mixed-use building on 840 Atlantic Avenue  
21 that would have hundreds of residential  
22 units; is that right?

23 A. Yes.

24 MR. WALSH: Okay. I'd like to  
25 mark the document beginning VA-020147,

1 PINCHUS S. ROTTENBERG

2 it spans through 156, as P-11.

3 (Plaintiff Exhibit 11, email  
4 string last dated March 13, 2018,  
5 Bates VA-020147 was received and  
6 marked on this date for  
7 identification.)

8 Q. It's available. If you can open  
9 that up, Mr. Rottenberg. It's a one-page  
10 email chain beginning with an email from you  
11 to Simon Dushinsky, March 13, 2018.

12 A. I see that. Okay.

13 Q. Subject: 547 Vanderbilt Draft  
14 Analysis; is that correct?

15 A. Right.

16 Q. Is 547 Vanderbilt another name  
17 for 840 Atlantic Avenue?

18 A. Yes, sir.

19 Q. So we're talking about the same  
20 property, right?

21 A. Yes, sir.

22 Q. There is an attachment, a  
23 property evaluation or I'll call it 840  
24 Atlantic Avenue by TerraCRG; is that  
25 correct?

1 PINCHUS S. ROTTENBERG

2 A. Right.

3 Q. Now, what was the purpose of  
4 retaining TerraCRG to perform this analysis?

5 A. Just wanted to see what the  
6 opinion of what the value is.

7 Q. What do you mean, the opinion of  
8 what value?

9 A. Just to get a look of what the  
10 property is value, in his eyes.

11 Q. In whose eyes?

12 A. In TerraCRG's eyes.

13 Q. And this is not an analysis of  
14 the value as the property is currently  
15 zoned, right?

16 A. Pardon?

17 Q. This is not valuing the property  
18 at its current zoning?

19 A. I don't know. I have to look at  
20 it.

21 Q. If you could just take a look at  
22 it for me. On the third page ending in 150  
23 it says Development Analysis R60 Portion.

24 A. Which page, page 3 ending in  
25 20150?

1 PINCHUS S. ROTTENBERG

2 Q. Yes.

3 A. It does state "the existing".

4 Q. So this is the existing zoning?

5 A. Yeah.

6 Q. Why were you forwarding this --  
7 strike that.

8 So if you can flip to the page  
9 ending in 156, it's the last page of the  
10 document.

11 A. Yeah.

12 Q. It says Summary. Can you just  
13 explain to me in your words what this --  
14 what the conclusion of TerraCRG was?

15 A. The value of the property.

16 Q. And what did they value the  
17 property at?

18 A. I'm not sure I follow your  
19 question. I'm reading the document same as  
20 you.

21 So the document says the  
22 development value of X and a ground lease  
23 summary value of X of Y or whatever.

24 Q. So they valued the property at  
25 what? I'm asking you. There are multiple

1 PINCHUS S. ROTTENBERG

2 numbers on here. How did they value the  
3 property?

4 A. I don't know. I just see the  
5 conclusion it has. One is 16,700,000 and  
6 the other one is 15,300,000, so...

7 Q. So you don't know?

8 A. No --

9 MR. KOH: Objection.

10 A. -- I'm looking at this now,  
11 so...

12 Q. So do you know?

13 A. Pardon?

14 Q. Do you know what they valued the  
15 property at?

16 A. Which number they valued the  
17 property at?

18 Q. I'm asking you if you know what  
19 they valued the property at?

20 MR. KOH: Objection. Go ahead.

21 Q. We'll move on.

22 Do you know if that -- if  
23 Vanderbilt provided the McDonald's lease to  
24 TerraCRG for purposes of its analysis?

25 A. I can't recall, no.

PINCHUS S. ROTTENBERG

MR. WALSH: Okay. So if we could mark the document Bates stamped at MCD-006083. And Howard and Mr. Rottenberg, this is a Bates stamped version of the Environmental Assessment Statement that was among the documents I sent you yesterday. So you should have a hardcopy of that as well. It's just not -- the version I sent yesterday I don't think was Bates stamped.

MR. KOH: It wasn't, but thank you. I have it. Has this been marked yet? I don't see it on the list.

CONCIERGE: A few more seconds.

MR. KOH: I didn't mean to rush you. I wanted to make sure we proceeded in an appropriate order.

CONCIERGE: No problem.

(Plaintiff Exhibit 12, 840 Atlantic Avenue Rezoning Environmental Assessment Statement, Bates MCD006083 was received and marked on this date for identification.)

1 PINCHUS S. ROTTENBERG

2 Q. So that document has now been  
3 marked as P-12. It begins with MCD006083 and  
4 runs to 6318. It's entitled 840 Atlantic  
5 Avenue Rezoning Environmental Assessment  
6 Statement. It's got a CEQR number prepared  
7 for Vanderbilt Atlantic Holdings, LLC  
8 prepared by Philip Habib & Associates on  
9 February 25th, 2021.

10 Do you see that, Mr. Rottenberg?

11 A. The file is still loading. Yes.  
12 I see that document, 236 pages.

13 Q. Who is Philip Habib &  
14 Associates?

15 A. He's an environmental  
16 consultant.

17 Q. For 840 Atlantic Avenue?

18 A. Vanderbilt Atlantic Holdings.

19 Q. Okay. And have you seen this  
20 document before?

21 A. Yes.

22 Q. And the date of February 25th,  
23 2021, does that seem accurate to you?

24 A. I'm not good at dates but this  
25 is what the document says.



1 PINCHUS S. ROTTENBERG

2 Q. So if you can turn to the first  
3 page of the form ending in 6085 --

4 A. Okay.

5 Q. -- Project Description. Do you  
6 see that?

7 A. Yes.

8 Q. And so this describes a rezoning  
9 application that Vanderbilt is seeking for  
10 840 Atlantic Avenue, right?

11 A. Right.

12 Q. And it says about midway  
13 through, "The applicant proposes to  
14 construct a new 18 story mixed-use building  
15 with approximately 376,432 gross square  
16 feet." Do you see that?

17 A. 300 -- yeah, a-hum.

18 Q. And it says, "The proposed  
19 development would contain 312,917 GSF of  
20 residential uses, comprising approximately  
21 318 dwelling units of which approximately 95  
22 would be affordable." Do you see that?

23 A. I do.

24 Q. And then it also talks about  
25 some commercial retail uses on the first and

1 PINCHUS S. ROTTENBERG

2 second stories and a community facility  
3 space on the first and second stories. Do  
4 you see that?

5 A. I do.

6 Q. So is this an accurate  
7 description of what Vanderbilt is -- is  
8 seeking a rezoning for?

9 A. Yes.

10 Q. And Vanderbilt is actively  
11 seeking a rezoning as described here; is  
12 that correct?

13 A. Right.

14 Q. When did Vanderbilt begin  
15 working on this rezoning?

16 A. I don't know. I can't give you  
17 dates. Sorry.

18 Q. Is this what Slater & Beckerman  
19 would have been hired for?

20 A. Yes.

21 Q. That is? So they were hired for  
22 purposes of working on this rezoning,  
23 correct?

24 A. Right.

25 Q. And what is the status of this

1 PINCHUS S. ROTTENBERG

2 zoning application?

3 A. It's going through the process.

4 Q. Where is it in the process?

5 A. It's going -- I don't know.

6 It's, like, before the council.

7 Q. If you could look on the next --

8 let's see, page ending 6086, the very bottom

9 on your 8. Analysis here. Do you see that?

10 A. Yeah.

11 Q. And this environmental

12 assessment statement shows the anticipated

13 build year for this project of 2023. Do you

14 see that?

15 A. I do.

16 Q. If you could flip -- and then it

17 says, "See Appendix C for construction

18 schedule." Do you see that right next to

19 2023?

20 A. Yeah. Okay.

21 Q. If you go to the very last page

22 of this document, that's Exhibit C?

23 A. Okay.

24 Q. Actually, just go actually to

25 the second to last page.

1 PINCHUS S. ROTTENBERG

2 A. Okay.

3 Q. It's a letter from Brian Hart.

4 A. A-hum.

5 Q. Who is Brian Hart?

6 A. I don't know.

7 Q. And it says "Dear Tom". Do you  
8 know who "Tom" was referring to?

9 A. Yes.

10 Q. Who is that?

11 A. Tom Li.

12 Q. Okay. So do you know who  
13 Gardiner & Theobald is?

14 A. No.

15 Q. But this is a proposed  
16 construction schedule for 840 Atlantic  
17 Avenue; is that right?

18 A. Right.

19 Q. And do you see the second  
20 paragraph? It says, "The construction  
21 schedule with a start date of 1/4/2022 and  
22 anticipated end date of on or about  
23 10/9/2023." Do you see that?

24 A. I do.

25 Q. So Vanderbilt -- when does

1 PINCHUS S. ROTTENBERG

2 McDonald's have the right to be on the  
3 property until? It's April 2039, right?

4 A. Right. Right.

5 Q. Okay. So Vanderbilt can't begin  
6 construction on this property until  
7 McDonald's leaves, right?

8 A. Right.

9 Q. Do you know where this document  
10 was submitted to?

11 A. Pardon?

12 Q. Do you know, this environmental  
13 assessment statement, where was it submitted  
14 to?

15 A. I don't know.

16 Q. Do you know why it was prepared?

17 A. This is part of the rezoning  
18 process.

19 Q. So would this have been  
20 submitted to the Department of City  
21 Planning?

22 MR. KOH: Objection. Go ahead.

23 Q. So would this have been  
24 submitted to the Department of City  
25 Planning?

1 PINCHUS S. ROTTENBERG

2 A. Yes, what I assume.

3 Q. Now, do you know why this  
4 document, why Vanderbilt didn't produce this  
5 document to McDonald's?

6 A. No.

7 MR. KOH: I'll object to that  
8 question but you've answered it. Go  
9 ahead.

10 Q. And this -- before Philip Habib  
11 & Associates submitted this document to DCP,  
12 they would have been required to get  
13 Vanderbilt's approval before they filed it;  
14 isn't that correct?

15 A. I don't know. I don't know  
16 whether they need its approval or just file  
17 it because they've been hired for this. I  
18 don't know the answer.

19 Q. Okay. Philip Habib & Associates  
20 is working on behalf of Vanderbilt Atlantic  
21 Holdings, right?

22 A. Correct.

23 Q. So after Vanderbilt acquired its  
24 99-year ground lease for the property, and  
25 the McDonald's lease for the property in

1 PINCHUS S. ROTTENBERG

2 November 2017, do you remember when  
3 Vanderbilt first reached out to McDonald's?

4 A. No.

5 Q. Do you recall reaching out to  
6 Katrina Rainey at McDonald's in January of  
7 2018?

8 A. I remember talking to some  
9 folks. I can't remember what time that was,  
10 what date.

11 Q. And do you remember why you  
12 contacted McDonald's?

13 A. Yeah. To get an understanding of  
14 what McDonald's plans is all about.

15 Q. What do you mean, what their  
16 plans were all about? Can you explain what  
17 that means?

18 A. What's the plan for the space.

19 Q. So you were interested whether  
20 McDonald's intended to stay on the property;  
21 is that right?

22 A. Right.

23 Q. And you also asked Katrina or  
24 somebody at McDonald's about potentially  
25 moving to a new location; is that right?

1 PINCHUS S. ROTTENBERG

2 A. I can't remember.

3 Q. Would you have been interested  
4 in McDonald's moving to a different  
5 location?

6 A. You know, very possible.

7 Q. Would that have benefited  
8 Vanderbilt if McDonald's moved to a new  
9 location?

10 A. Yeah. It could be part of  
11 various other things that could have  
12 benefited Vanderbilt and that is part of  
13 that.

14 Q. But if McDonald's moved to a new  
15 location that would benefit Vanderbilt,  
16 right?

17 A. I'm not sure.

18 Q. Okay. But if McDonald's moved,  
19 then Vanderbilt could begin immediately  
20 redeveloping the property; isn't that right?

21 A. I'm not sure.

22 Q. Can Vanderbilt redevelop the  
23 property while McDonald's is on it?

24 A. Again?

25 Q. Can Vanderbilt redevelop the



1 PINCHUS S. ROTTENBERG

2 property while McDonald's is on it?

3 A. While McDonald's is --

4 Q. -- is still on the property?

5 A. No.

6 Q. Okay. So in order for Vanderbilt  
7 to redevelop the property it needs  
8 McDonald's to leave, correct?

9 A. Yeah.

10 Q. Correct?

11 A. Correct.

12 Q. So do you remember when you  
13 first spoke with Carol Demarco at  
14 McDonald's?

15 A. No.

16 Q. Do you know who Carol is?

17 A. Yeah.

18 Q. Who is she?

19 A. She works for McDonald's.

20 MR. WALSH: I'd like to mark  
21 MCD006379, an email chain ending in 82  
22 that will be P-13.

23 (Plaintiff Exhibit 13, email  
24 string last dated February 26, 2018,  
25 Bates MCD006379 was received and

1 PINCHUS S. ROTTENBERG

2 marked on this date for

3 identification.)

4 CONCIERGE: It's been uploaded.

5 Q. If you can just flip to the  
6 third page ending in 6381, it's an email  
7 from Carol Demarco to you dated February  
8 8th, 2018 with a copy to Michael Meyer at  
9 McDonald's. Do you see that?

10 A. I do.

11 Q. In that email she says, "Hi Sam,  
12 It was a pleasure to speak with you and  
13 discuss your property in Brooklyn.  
14 Congratulations on securing a 99-year lease.  
15 As we discussed, the current lease expires  
16 2019 and we have options through 2039.  
17 McDonald's has a U.S. national initiative to  
18 modernize all restaurants by 2020 and we  
19 would like to plan for this site. If you  
20 have any questions regarding the language in  
21 the lease you can have your attorney call  
22 Mike Meyer to discuss. Mike is copied on  
23 this email." Do you see that?

24 A. I do.

25 Q. And does that refresh your

1 PINCHUS S. ROTTENBERG

2 recollection about when you spoke with  
3 Carol?

4 A. No.

5 Q. Okay.

6 A. I can see the date on this  
7 email. That's all.

8 Q. Do you remember what you  
9 discussed with her?

10 A. I don't know. I think I had more  
11 than one conversation for me to remember  
12 what I discussed with her.

13 Q. How about this email, does this  
14 refresh your recollection about, you know,  
15 Carol telling you that McDonald's had  
16 options through 2039 and it intended to  
17 modernize the site? Do you recall that?

18 A. No, but I see it now. So I'm  
19 sure that that was -- that's what she wrote  
20 to me.

21 Q. Okay. And were you aware when  
22 you began speaking with McDonald's, that  
23 McDonald's had the right to stay on the  
24 property through 2039?

25 A. I don't know of what I was aware

1 PINCHUS S. ROTTENBERG

2 at which time.

3 Q. Was Vanderbilt --

4 A. I don't know if I was aware, at  
5 which point I reached out to Carol, I spoke  
6 to her, I spoke to other people, so I don't  
7 know.

8 Q. Was Vanderbilt aware when it  
9 acquired the 99-year ground lease for the  
10 property that McDonald's had the option to  
11 stay on the property through April 2039?

12 A. Again, I'm not sure what I was  
13 aware at which given time at which given  
14 juncture throughout this whole kind of  
15 transaction, so...

16 Q. Would that have been a material  
17 fact for Vanderbilt to be aware of when it  
18 acquired the 99-year ground lease?

19 A. I don't know.

20 Q. So you don't think that whether  
21 McDonald's had the right to be on the  
22 property for 22 or 21 and a half more years  
23 was material in Vanderbilt's decision to  
24 acquire a 99-year ground lease for the  
25 property?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 MR. KOH: Objection. He's  
4 answered.

5 Q. And you said it was not  
6 material?

7 A. I don't know whether at that  
8 point it was material or not. That's what I  
9 said.

10 Q. Well, what would you need to  
11 know whether it was material? I mean, I  
12 don't understand your answer "I don't know".  
13 Is it or is it not?

14 A. I don't know what -- what went  
15 into this.

16 Q. Well, were you surprised --

17 A. I can't remember the thinking  
18 back then what went into this, so that's why  
19 I said I don't know.

20 Q. And you have no idea when  
21 Vanderbilt learned about the McDonald's  
22 lease?

23 A. No, I can't recall that.

24 Q. Would you be --

25 A. I'm sure -- I am sure -- I'm

1 PINCHUS S. ROTTENBERG

2 sure if you have all the documents you see  
3 it somewhere and if you can show it to me  
4 the same as you're showing me all the other  
5 stuff.

6 Q. It's actually not my job to show  
7 you all the documents. It's your job to be  
8 able to answer my questions as Vanderbilt's  
9 corporate representative. That's why we're  
10 here today.

11 MR. KOH: I'll object to that  
12 description of the law. Please  
13 continue your examination by asking  
14 questions, Mr. Walsh, not by  
15 pontificating on what the law is. We  
16 can do that another time.

17 MR. WALSH: I'm sure we will.

18 Q. Would you be surprised,  
19 Mr. Rottenberg, if Vanderbilt was not aware  
20 of the McDonald's lease when it acquired  
21 this property?

22 A. Again?

23 MR. WALSH: Can you please read  
24 that back.

25 (Pending question is read back

1 PINCHUS S. ROTTENBERG

2 by the reporter.)

3 A. No.

4 Q. The Vanderbilt lease refers to  
5 the McDonald's lease, right?

6 A. I have to see it.

7 Q. Well, didn't we talk about it  
8 before? Remember, we had the whole  
9 conversation about the financial terms?

10 A. Yes, we did. But it doesn't  
11 refer to the lease. It just said what the  
12 fact is going to be in the event of various  
13 things.

14 Q. Well, it defines the existing  
15 tenant, talks about a lease.

16 A. It defines the tenant not the  
17 lease.

18 Q. We'll move on. All right.

19 So in February 2018 you  
20 understood, at least by that time, that  
21 McDonald's had the right to be there through  
22 2039 and planned to modernize the site;  
23 isn't that correct?

24 A. I'm not sure what I believed at  
25 which given time or what I knew at given

1 PINCHUS S. ROTTENBERG

2 time. I'm not very good at dates and I don't  
3 remember dates, what's said at which time,  
4 so, you know...

5 Q. Okay.

6 A. I don't know my kids' birthdays,  
7 so...

8 MR. KOH: There is no pending  
9 question.

10 Q. And let's go back to P-13, the  
11 page ending in 6381, it's the last part of  
12 that February 8, 2018 email from Carol  
13 Demarco to you. She wrote, "If you have any  
14 questions regarding the language in the  
15 lease you can have your attorney call Mike  
16 Meyer to discuss."

17 Do you recall whether you  
18 discussed the language in the lease with  
19 Carol?

20 A. No.

21 Q. And do you recall if there was  
22 any disagreement or I guess information that  
23 you weren't aware of about the language in  
24 the lease when you spoke with Carol?

25 A. No.



1 PINCHUS S. ROTTENBERG

2 Q. Who would know?

3 A. I would.

4 MR. WALSH: All right. If we  
5 could mark the document MCD08 -- sorry  
6 -- MCD008022, that will be P-14.

7 (Plaintiff Exhibit 14, email  
8 string last dated February 16, 2018,  
9 Bates MCD008022 was received and  
10 marked on this date for  
11 identification.)

12 Q. It's a one-page email from --  
13 it's an email from Murray Schneier and you  
14 had testified earlier he's Vanderbilt's  
15 lawyer, correct?

16 A. Right.

17 Q. An email to Mike Meyer at  
18 McDonald's with a cc to you, Sam Rottenberg  
19 and Jonathan Eiseman. Do you see that?

20 A. Yes.

21 Q. The subject: Atlantic Avenue.  
22 Have you seen this email before?

23 A. I'm sure I've seen it but, you  
24 know, it refreshes my recollection of this.  
25 That's all.

1 PINCHUS S. ROTTENBERG

2 Q. And do you recall why Murray  
3 Schneier needed to reach out to Mike Meyer?

4 A. I can only guess this is  
5 relating to the previous email that you  
6 showed me.

7 Q. So was there -- was Vanderbilt  
8 confused about the language of the lease?  
9 I'm just trying to understand why at that  
10 time Mr. Schneier would have been reaching  
11 out.

12 A. The only thing I can say, it has  
13 something to do with the lease. What  
14 specifically, I can't remember.

15 Q. And in that second paragraph of  
16 the email he said, "My client spoke with  
17 Carol Demarco who suggested we reach out to  
18 you to discuss the renewal options in the  
19 lease." Do you see that?

20 A. Yeah.

21 Q. What did he mean "he wanted to  
22 reach out to discuss the renewal options in  
23 the lease"?

24 MR. KOH: Objection. Go ahead.

25 A. Exactly what is written in this

1 PINCHUS S. ROTTENBERG

2 email, you know, to discuss the renewal  
3 options in this lease.

4 Q. Was Vanderbilt trying to discuss  
5 with McDonald's not renewing the -- renewing  
6 the lease for the option terms?

7 A. So there were multiple  
8 conversations. I don't know what happened at  
9 that juncture and what the conversation was  
10 at that time at that given time, what the  
11 nature was, so...

12 Q. Do you know, does Murray  
13 Schneier still represent Vanderbilt?

14 A. I don't think so, no.

15 Q. Do you know if anyone from  
16 Vanderbilt reached out to Mr. Schneier to  
17 see if he had any responsive documents to  
18 our document requests?

19 A. I have no idea.

20 Q. Okay. Do you know if  
21 Mr. Schneier had any notes about his calls  
22 with Carol Demarco or Mike Meyer?

23 A. I don't know.

24 Q. Okay. Do you have any  
25 handwritten notes about your calls with

1 PINCHUS S. ROTTENBERG

2 them?

3 A. No.

4 Q. Do you know if you ever did?

5 A. No.

6 Q. You are just not sure?

7 A. I probably didn't.

8 MR. WALSH: I'd like to mark a  
9 document MCD005479, it's a two-page  
10 document ending in 5480. It's a  
11 letter on Vanderbilt to McDonald's  
12 Corporation. That's now Exhibit P-15.

13 (Plaintiff Exhibit 15, letter  
14 from Vanderbilt Atlantic Holdings to  
15 McDonald's Corporation dated May 10,  
16 2018, Bates MCD005479 was received and  
17 marked on this date for  
18 identification.)

19 Q. Do you see that that document?

20 A. I do.

21 Q. If you could flip to the second  
22 page, whose signature is that on behalf of  
23 Vanderbilt Atlantic Holdings?

24 A. Simon Dushinsky.

25 Q. And Simon would have consulted

1 PINCHUS S. ROTTENBERG

2 with you before signing this letter?

3 A. Yes.

4 Q. And so you authorized him to  
5 send this letter?

6 A. Yes.

7 Q. How did Vanderbilt determine  
8 that the fair market value was \$975,000?

9 A. I could not sit here now and  
10 tell you how Vanderbilt came to that  
11 conclusion back then.

12 Q. What do you mean by  
13 "Vanderbilt"? That would have been you,  
14 right?

15 A. Yes.

16 Q. And you don't recall how you  
17 came to that conclusion?

18 A. No. I don't remember whether  
19 this was due to appraisal or whether it was  
20 due to a value. I don't know.

21 Q. We looked at TerraCRG before, do  
22 you recall that?

23 A. I recall the TerraCRG analysis,  
24 yes.

25 Q. So would that have been used?

1 PINCHUS S. ROTTENBERG

2 A. Possible. As I told you, I don't  
3 remember.

4 Q. Other than TerraCRG, did  
5 Vanderbilt consult with anyone else about  
6 the value of the property around this time?

7 A. Possible, but I don't remember.

8 Q. Okay. What did you do in  
9 preparation for today's deposition to  
10 determine, you know, what Vanderbilt may  
11 have done to value that property?

12 A. Just try to kind of remember how  
13 this -- how I came to that conclusion, but I  
14 can't come up with anything to remember how  
15 specifically I came up with this.

16 Q. So you didn't look at any  
17 documents?

18 A. No. Other than the ones you  
19 sent me and that was sent -- we talked about  
20 this before, right?

21 Q. I'm just trying to make sure I  
22 understand because, frankly, there is a lot  
23 of stuff that you don't know that I'm just  
24 surprised that you don't know.

25 A. There is so many multiple

1 PINCHUS S. ROTTENBERG

2 conversations that --

3 MR. KOH: I don't think there  
4 was a question there. Mr. Walsh was  
5 expressing his apparent surprise.

6 Do you have a question,  
7 Mr. Walsh?

8 MR. WALSH: I'll move on.

9 MR. KOH: Okay.

10 Q. So were there discussions with  
11 you and Mr. Dushinsky and anyone else at  
12 Vanderbilt about what you expected  
13 McDonald's response to be to this letter?

14 A. Very possible. I don't know. I  
15 can't remember.

16 Q. And this would have represented  
17 more than a 400% increase in McDonald's  
18 rent, right?

19 A. I didn't know the percentage,  
20 but, you know, if you are telling me it's  
21 400%...

22 Q. And had Vanderbilt previously  
23 discussed with McDonald's estimates of FMV  
24 before this letter?

25 A. I can't remember. This goes back

1 PINCHUS S. ROTTENBERG

2 to the question you asked me before, so...

3 Q. So you don't know?

4 A. I can't remember.

5 MR. WALSH: If we could mark the  
6 Option Rent Addendum pdf as Exhibit  
7 P-16? And this is Exhibit G to the  
8 McDonald's lease, it's the Option Rent  
9 Addendum. It's a two-page exhibit.

10 CONCIERGE: Could you repeat the  
11 file name?

12 MR. WALSH: Option Rent Addendum  
13 dot pdf.

14 (Plaintiff Exhibit 16,  
15 McDonald's Option Rent Addendum, was  
16 received and marked on this date for  
17 identification.)

18 CONCIERGE: It's uploaded.

19 Q. Mr. Rottenberg, you've seen this  
20 Option Rent Addendum before, right?

21 A. It's still loading but --

22 MR. KOH: I don't have it loaded  
23 yet either.

24 MR. WALSH: Okay.

25 MR. KOH: Now I have it.



1 PINCHUS S. ROTTENBERG

2 MR. WALSH: Okay.

3 A. This was done in 1998. It's a  
4 long time ago.

5 Q. Not that long ago.

6 MR. KOH: My children were  
7 babies, they're now college graduates.  
8 It's a long time ago.

9 THE WITNESS: I have 11 children  
10 and none of them was born back then.

11 Q. So this describes the process  
12 that the rent -- this describes the process  
13 for how the rent McDonald's will pay in the  
14 option years will be determined; is that  
15 right?

16 A. Right.

17 Q. Okay. And it provides that the  
18 landlord shall notify tenant of landlord's  
19 estimate of the FMV no later than 180 days  
20 prior to the end of the primary term; is  
21 that right?

22 A. Yeah.

23 Q. Yeah. And then if you can't  
24 agree, then it provides for an appraisal  
25 process; is that right?

1 PINCHUS S. ROTTENBERG

2 A. Correct.

3 Q. Okay. So this May 10, 2018  
4 letter, was that -- was that Vanderbilt  
5 notifying McDonald's of its estimate of the  
6 FMV according to the Option Rent Addendum?

7 A. I assume so.

8 Q. And how did McDonald's respond  
9 to that letter, do you recall?

10 A. I'm sure you know this through  
11 the documents. It is the only way I recall  
12 to remember that.

13 Q. And you didn't do any  
14 preparation to figure out how that happened,  
15 right?

16 A. How what happened?

17 Q. You didn't prepare to discuss,  
18 you didn't do any preparation, you didn't  
19 review any documents to determine -- I'll  
20 move on. You don't remember?

21 A. I don't remember. If you have a  
22 question you can show to me what the --

23 Q. I have a lot of questions. You  
24 just don't have a lot of answers, but I'll  
25 move on.

1 PINCHUS S. ROTTENBERG

2 Do you recall having a  
3 discussion in May after this letter was sent  
4 with Carol Demarco about this?

5 A. I told you before I'm not sure  
6 how many conversations I had with Carol  
7 Demarco and at which given time.

8 Q. And do you recall if you ever  
9 asked Carol what McDonald's would do if it  
10 did not like the rent or fair market value  
11 determined by Vanderbilt?

12 A. Do I remember that conversation?

13 Q. Yes.

14 A. No, but I'm just saying I'm not  
15 remembering, I don't remember.

16 MR. WALSH: Okay. I think now  
17 would be a good time for a break.

18 THE WITNESS: What are you going  
19 to do at the break, have lunch?

20 MR. WALSH: I need a short break  
21 but we have to understand I guess from  
22 the court reporter and all the others  
23 involved. I don't need a very long  
24 break.

25 MR. KOH: It's 1:15. I think

1 PINCHUS S. ROTTENBERG

2 that the court reporter is probably a  
3 little tired.

4 VIDEOGRAPHER: Going off the  
5 record 1:12 p.m. This marks the end  
6 of media 2.

7 (Lunch recess is taken.)

8 VIDEOGRAPHER: We are back on  
9 the record at 1:48 p.m. and this  
10 starts media 3.

11 Q. Mr. Rottenberg, do you have any  
12 other screens, any other programs on your  
13 computer right now other than Zoom and the  
14 Exhibit Share?

15 A. Not in front of my screen, just  
16 -- I'm just seeing Exhibit Share and Zoom.  
17 That's all I'm seeing.

18 Q. So what else do you have open?

19 A. I don't know. I have internet  
20 Outlook.

21 Q. Okay. At the beginning of this  
22 deposition I -- I believe I asked you if you  
23 had everything closed and you said you did.  
24 If you can close out of every other program  
25 that is not required for this deposition, it

1 PINCHUS S. ROTTENBERG

2 should only be the Zoom link and the

3 Veritext Exhibit Share.

4 A. Okay.

5 Q. Now, on this break did you have

6 any discussions with anyone about this

7 deposition?

8 A. Again?

9 Q. On your break did you have any

10 discussions with anyone about your

11 deposition?

12 A. No, just with Tom Li.

13 Q. And what did you discuss with

14 Tom Li?

15 A. Nothing.

16 Q. Well, you just said you

17 discussed with him.

18 A. I discussed with him, I just

19 said kind of we're doing this deposition.

20 That's it.

21 Q. Really?

22 A. Yeah. Really.

23 Q. Okay. So you had a discussion

24 about nothing?

25 A. I did not have a discussion. I

1 PINCHUS S. ROTTENBERG

2 just, you know, kind of -- I was alluding to  
3 that deposition.

4 Q. You know he's watching it,  
5 though, right?

6 A. Yeah.

7 Q. Okay. And how about in the last  
8 break before this one, did you have any  
9 discussions with Mr. Li then?

10 A. No.

11 Q. So at what point -- we just went  
12 through how in May 2018 Vanderbilt sent over  
13 to McDonald's its estimate of the fair  
14 market value of the rent and there were some  
15 discussions that you don't recall anything  
16 about; is that correct? You don't recall  
17 anything about those discussions with  
18 McDonald's in May 2018?

19 A. I don't remember what happened  
20 in May 2018. I can't remember dates and I  
21 wouldn't remember dates.

22 Q. Okay.

23 A. No.

24 Q. Putting aside the dates, you  
25 don't remember what you discussed with

1 PINCHUS S. ROTTENBERG

2 McDonald's around the time that you sent  
3 them that letter?

4 A. No. I remember, you know, there  
5 were conversations, various conversations  
6 with McDonald's throughout this whole thing.  
7 I can't remember what was the conversation  
8 at which time.

9 Q. Okay. So at what point did  
10 Vanderbilt reach the conclusion that it was  
11 not going to be able to reach agreement with  
12 McDonald's on the FMV for 840 Atlantic  
13 Avenue?

14 A. When we got a letter from you  
15 guys.

16 Q. And do you remember when that  
17 was?

18 A. No.

19 Q. And so if the parties can't  
20 agree on the fair market value, the Option  
21 Rent Addendum required the parties to each  
22 hire an appraiser, right?

23 A. Yes.

24 Q. And is that what Vanderbilt did?

25 A. Yes.

1 PINCHUS S. ROTTENBERG

2 Q. And ultimately selected Tom  
3 Tener for that appraisal, to serve as its  
4 appraiser, right?

5 A. Yes.

6 Q. Before it selected Tom Tener to  
7 serve as its appraiser, what characteristics  
8 was Vanderbilt looking for in deciding -- in  
9 making its decision about which appraiser to  
10 choose?

11 A. However we felt comfortable. I  
12 don't remember which one, why there was a  
13 reason specifically why we choose one.

14 Q. Who else at Vanderbilt would  
15 know?

16 A. Myself.

17 Q. What other appraisers did  
18 Vanderbilt consider retaining before it  
19 retained Mr. Tener?

20 A. I don't know. I don't know how  
21 many things it could be, no.

22 Q. Did it consider other appraisers  
23 before it retained Mr. Tener?

24 A. I don't know whether we  
25 considered other appraisers but we talked to



1 PINCHUS S. ROTTENBERG

2 other appraisers.

3 Q. And you talked to other  
4 appraisers about potentially serving the  
5 role that Mr. Tener ultimately served; is  
6 that right?

7 A. Very possible. I don't remember  
8 but very possible.

9 Q. Who else would know?

10 A. Myself.

11 Q. Nobody else?

12 A. Maybe Morris Missry.

13 Q. Who is Morris Missry?

14 A. Morris Missry was the attorney  
15 -- yeah, he was my attorney.

16 Q. When you say "my attorney", he  
17 was Vanderbilt's attorney?

18 A. Yes.

19 Q. When did Vanderbilt retain  
20 Mr. Missry?

21 A. I don't remember the date.

22 Q. But ultimately, you were  
23 responsible for making all decisions on  
24 behalf of Vanderbilt; is that correct?

25 A. Yes.

1 PINCHUS S. ROTTENBERG

2 Q. Did Mr. Missry have authority to  
3 make decisions on behalf of Vanderbilt  
4 without getting your approval?

5 A. Very possible. There was --  
6 again, this goes -- I don't know if you  
7 know, you get a sense how the way I operate.  
8 It's like, you know, I don't know, it  
9 depends on the moment, it depends on the  
10 conversation, it depends on -- you know, so  
11 it depends on the task, it could be, you  
12 know.

13 Q. So from Vanderbilt's  
14 perspective, were you responsible for the  
15 fair market value process under the Option  
16 Rent Addendum?

17 A. Yes.

18 Q. Was anyone else at Vanderbilt  
19 responsible for it?

20 A. No.

21 Q. And did you delegate any  
22 responsibility for that process to anybody  
23 else?

24 A. Very possible that I delegate it  
25 to attorneys and appraisers, yes. But,

1 PINCHUS S. ROTTENBERG

2 again, I'm not sure at which juncture I  
3 delegated it to them or to which extent I  
4 delegated it to them. This goes like on a  
5 day-to-day thing. One day I can give them  
6 authority and other day -- this is no plans,  
7 there is no direct kind of protocol, if you  
8 will.

9 Q. Do you recall delegating  
10 authority to anybody else?

11 A. No. But at the same time, you  
12 know, I could have, knowing the way I am.

13 MR. WALSH: I'd like to mark as  
14 Exhibit P-17 the document starting  
15 with VA-015253, it spans through Bates  
16 262. It's an email from Tom Li to  
17 Jerry Sullivan at BBG dated May 30,  
18 2018 with an attachment which is a  
19 signed retention agreement.

20 Tell me when you've had a chance  
21 to open up that document,  
22 Mr. Rottenberg.

23 (Plaintiff Exhibit 17, email  
24 string last dated May 30, 2018,  
25 attaching retention agreement, Bates

1 PINCHUS S. ROTTENBERG

2 VA-015253 was received and marked on  
3 this date for identification.)

4 A. Okay.

5 Q. So this is a retention  
6 agreement. This is a signed retention  
7 agreement between BBG and you, it says  
8 Mr. Sam Rottenberg, SPR Group. Do you see  
9 that?

10 A. Yes.

11 Q. And the re line on the letter,  
12 which is ending in 256, the re line is 840  
13 Atlantic Avenue. Do you see that?

14 A. Yes.

15 Q. And it says the intended user is  
16 Vanderbilt Atlantic Holdings, LLC and it's  
17 related entity successor assigns, right?

18 A. Yes.

19 Q. And who is BBG and what do they  
20 do?

21 A. They're an appraisal firm.

22 Q. So they're appraisers?

23 A. Yes.

24 Q. And you retained BBG to perform  
25 an appraisal of the fee simple interest on

1 PINCHUS S. ROTTENBERG

2 the property, right?

3 A. That's what I see, yes.

4 Q. Do you recall or did Vanderbilt  
5 provide a copy of the McDonald's lease to  
6 BBG?

7 A. I don't recall.

8 Q. What was the purpose of  
9 retaining BBG?

10 A. Just for me to get another look  
11 how they kind of viewed the value of the  
12 property.

13 Q. And so this is just within a  
14 couple weeks of Vanderbilt sending its  
15 letter to McDonald's notifying it of its  
16 valuation and McDonald's rejecting it,  
17 right?

18 A. I'll take your word for it.

19 Q. I'm asking you. You don't  
20 remember?

21 A. I don't remember the dates. I  
22 wouldn't remember when you send a letter and  
23 when I kind of hired BBG. No, I don't  
24 remember.

25 Q. So did Vanderbilt retain BBG to

1 PINCHUS S. ROTTENBERG

2 help it determine the fair market value of  
3 the rent under the McDonald's ground lease?

4 MR. KOH: Objection. Go ahead.

5 A. I don't think so.

6 Q. So what were they retained for?

7 A. Just for me to kind of see what  
8 somebody else independently thinks the value  
9 is.

10 Q. And why would that have been  
11 helpful for Vanderbilt to know at that time?

12 A. I just wanted to get a flavor  
13 what people think the value is.

14 Q. So this was not connected to the  
15 fair market value process laid out in the  
16 Option Rent Addendum?

17 A. No. I don't think so.

18 Q. But you can't think of any other  
19 specific purpose than it would have been  
20 for?

21 A. Yes. For me to see what people  
22 valued it.

23 Q. So do you know if you retained  
24 BBG before or after you contacted Tom Tener?

25 A. No.

PINCHUS S. ROTTENBERG

MR. WALSH: So if we can mark VA-010599 as Exhibit P-18, it runs through Bates number 010700. It's appraisal report prepared by BBG, requested by Mr. Sam Rottenberg, SPR Group, date of value June 26, 2018 as is. If you can just open that document when it becomes available.

(Plaintiff Exhibit 18, Appraisal Report value as of June 26, 2018, Bates VA-010599 was received and marked on this date for identification.)

A. Yes, P-17, right.

Q. Yes.

A. Okay.

Q. No. It's actually P-18.

A. Oh, I don't have it yet. Hold on.

MR. KOH: Refresh your screen. I've got it.

A. Okay.

Q. Okay?

A. Okay.

1 PINCHUS S. ROTTENBERG

2 Q. So BBG prepared this appraisal  
3 dated July 9, 2018 with a valuation date of  
4 June 26, 2018 for the property 840 Atlantic  
5 Avenue, right?

6 A. Yes.

7 Q. And if you could look at the  
8 page ending, the second page of that letter  
9 ending in 601, the very first line at the  
10 top it says, "The subject is currently  
11 leased to McDonald's. We've been asked to  
12 provide an as is value of the subject  
13 assuming the property can be developed as of  
14 right." Do you see that?

15 A. Yes.

16 Q. Did Vanderbilt give BBG  
17 information about the McDonald's lease?

18 A. I can't remember. I'm sure you  
19 have it in emails if that's the case, but I  
20 can't remember.

21 Q. Okay. So don't assume -- I'm  
22 asking you questions because I'm trying to  
23 understand what the answer is. Don't assume  
24 that I have all the answers. I wouldn't be  
25 asking all these --



1 PINCHUS S. ROTTENBERG

2 A. I get it. But my point is there  
3 is a lot of stuff like this that refreshes  
4 my recollection just by seeing a document,  
5 not through my recollection. That's why I  
6 said the document would most of the time  
7 kind of steer you to what happened, more  
8 than I would remember personally, so...

9 Q. Okay. But you're not aware  
10 whether Vanderbilt provided the lease, the  
11 McDonald's lease to BBG, right?

12 A. No.

13 Q. Okay. Do you know if BBG knew  
14 that McDonald's had the right to renew the  
15 lease through April 2039?

16 MR. KOH: Objection. Go ahead.

17 A. What was the question, if I knew  
18 McDonald's has the right --

19 Q. Did Vanderbilt give BBG  
20 information that would have made BBG aware  
21 that McDonald's had the right to renew its  
22 lease through April 2039?

23 A. I said before, I don't remember.

24 Q. Okay. If you could turn to the  
25 page ending in 010666 of the report, it

1 PINCHUS S. ROTTENBERG

2 indicates that BBG used the land sales  
3 comparison approach to value the property.  
4 Do you see that?

5 A. I'm not there yet. 66- what?

6 Q. Ending in 666.

7 A. 666, yes. I'm on that page.

8 Q. Do you know why BBG valued the  
9 property using the land sales -- the land  
10 sales comparison approach?

11 MR. KOH: Objection.

12 A. No. You got to ask BBG that  
13 question. I don't know.

14 Q. Okay. Well, if you would turn  
15 back to the page ending in 603, BBG  
16 concluded that the fee simple interest of  
17 840 Atlantic Avenue was valued at \$18.8  
18 million as of April 26, 2018.

19 Do you agree that that's what  
20 they concluded?

21 A. 603?

22 Q. Yes.

23 A. Yeah.

24 Q. Okay. And what was Vanderbilt's  
25 reaction to that valuation?

1 PINCHUS S. ROTTENBERG

2 A. I can't remember what the  
3 reaction was.

4 Q. Do you remember if it was higher  
5 or lower than you anticipated?

6 A. No. There were various other  
7 appraisals, I don't know if at the same time  
8 or different time. So that's why I can't  
9 remember what my reaction was.

10 Q. So what other appraisals,  
11 besides the BBG one, did you look at?

12 A. I can't even remember, like,  
13 there were a few others.

14 Q. Which ones?

15 A. Well, I can't -- the document  
16 would tell me which ones it was. I can't  
17 remember the companies that have done it  
18 back then.

19 Q. And you didn't look at any of  
20 those documents before this deposition, did  
21 you?

22 A. No. I looked at the documents  
23 that were sent.

24 Q. And when you say you looked at  
25 the documents that were sent, were those the

1 PINCHUS S. ROTTENBERG

2 documents that I sent to your attorney  
3 yesterday?

4 A. Yes.

5 Q. And you didn't look at any other  
6 documents besides those?

7 A. No.

8 MR. KOH: Are you excluding in  
9 that question any meeting that --

10 THE WITNESS: -- that I had with  
11 you, Howard Koh.

12 MR. WALSH: I'm not excluding  
13 anything. I'm wanting to know what  
14 other documents. He said he only  
15 reviewed the documents I sent. I want  
16 to know if he reviewed any other  
17 documents in preparation for his  
18 deposition.

19 MR. KOH: Okay. Answer the  
20 question.

21 A. I met with Howard before and I  
22 don't remember looking at any other  
23 documents.

24 Q. Okay. Do you recall when  
25 Vanderbilt first reached out to Tom Tener?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. And how did you learn of -- how  
4 did Vanderbilt know of Tom Tener and his  
5 firm KTR?

6 A. Probably I've seen them from --  
7 through other assignments which I had  
8 previously done, which I don't remember what  
9 it was.

10 Q. Have you ever worked with Tom  
11 Tener or any other appraisers at KTR before  
12 this assignment?

13 A. No.

14 Q. No? And you don't recall if he  
15 was recommended by somebody else or --

16 A. No.

17 MR. WALSH: If you could mark  
18 the document VA-02633, also a one-page  
19 email from Tom Tener to Sam Rottenberg  
20 with a cc to Shaun Kest at KTR and  
21 Theresa Nygard dated June 7, 2018 with  
22 the subject 840 Atlantic Avenue.

23 CONCIERGE: Sorry. You cut out  
24 during the file name. Can you repeat  
25 that?

1 PINCHUS S. ROTTENBERG

2 MR. WALSH: VA-022633.

3 CONCIERGE: It's been uploaded.

4 (Plaintiff Exhibit 19, email  
5 string last dated June 7, 2018, Bates  
6 VA-022633 was received and marked on  
7 this date for identification.)

8 Q. If you can open up what's been  
9 marked as P-19, Mr. Rottenberg?

10 A. Okay.

11 Q. Does this refresh your  
12 recollection about when Vanderbilt first  
13 reached out to KTR about potentially doing  
14 some appraisal work for 840 Atlantic Avenue?

15 A. What, for the date?

16 Q. Yeah. So there is a date --

17 A. June 7, 2018.

18 Q. So does that refresh your  
19 recollection about when you started speaking  
20 with KTR?

21 A. No. It wouldn't refresh my  
22 recollection, other than it's evidence right  
23 here.

24 Q. So would you agree that it  
25 appears you reached out to KTR in June 2018?

1 PINCHUS S. ROTTENBERG

2 A. Yes. Yes, I confirm that.

3 Q. And it appears that Mr. Tener  
4 was responding to an inquiry that was made  
5 to Theresa, from the cc I assume is Theresa  
6 Nygard at KTR and this is on the second  
7 line, "a scope and fee structure for the  
8 appraisal of your property at 840 Atlantic  
9 Avenue." And he has some information about  
10 his understanding of what that property is  
11 zoned. And in the second paragraph he  
12 writes, "Although the site is encumbered by  
13 a ground lease dated November 30, 2017 you  
14 have informed Theresa that the ground lease  
15 is between related entities and that you  
16 would like an appraisal of the fee simple  
17 interest on the site without consideration  
18 of the ground lease. It is also our  
19 understanding that the lease with McDonald's  
20 will be expiring in the near term." Do you  
21 see that?

22 A. I do.

23 Q. So you told KTR that the lease  
24 with McDonald's will be expiring in the near  
25 term?

1 PINCHUS S. ROTTENBERG

2 A. Yes. That's what it says here.

3 Q. Why did you tell them that?

4 A. I don't remember the purpose.

5 Q. Okay. In the next paragraph you  
6 wrote -- Mr. Tener wrote to you, "It is my  
7 understanding that you would like an  
8 appraisal of the site based on the current  
9 zoning. You indicated to Theresa there is a  
10 pending zoning change along Atlantic Avenue  
11 that may impact the M11 zoning of the  
12 subject site. You would also like the site  
13 appraised under the assumption that this  
14 proposed zoning is approved. Lastly, you  
15 would like us to investigate and opine on an  
16 appropriate market ground rent for the  
17 parcel based on typical ground lease  
18 provisions in New York City." Do you see  
19 that?

20 A. I do.

21 Q. So do you agree that at this  
22 time you had asked KTR to perform an  
23 appraisal of the appropriate market ground  
24 rent for the McDonald's lease?

25 MR. KOH: Objection.



1 PINCHUS S. ROTTENBERG

2 A. Why for the McDonald's? It's  
3 just an appropriate kind of rent. That's  
4 all.

5 Q. Well, what other appropriate  
6 ground rent could this be referring to?

7 A. Just what a property like this  
8 would -- would get in ground rent.

9 Q. So this is not specific to the  
10 McDonald's lease? This was for an  
11 appropriate ground lease --

12 A. I'm -- I'm not sure when this  
13 was. Again, I'm not sure if it's in  
14 conjunction -- I know this is June 2018, but  
15 still I cannot know in the context when this  
16 conversation took place, whether this was in  
17 the context of the McDonald's lease or just  
18 to me, personally, to get familiar and know  
19 -- get another sense of whether -- what in  
20 their eyes they would value this.

21 Q. Okay. But you had told them that  
22 the lease with McDonald's would be expiring  
23 in the near term, right?

24 A. I guess -- I'm not sure Tom  
25 Tener is lying, so...

1 PINCHUS S. ROTTENBERG

2 Q. So you also state in there that  
3 -- and this is in the second paragraph --

4 MR. KOH: I think it's Mr. Tener  
5 who states it.

6 MR. WALSH: I'm sorry.

7 Q. Mr. Tener states that you have  
8 informed Theresa that the ground lease is  
9 between related entities.

10 Why did you tell Mr. Tener that  
11 the ground lease was between related  
12 entities?

13 A. Pardon?

14 Q. Why did you tell Mr. Tener that  
15 the ground lease is between related  
16 entities?

17 A. I can't remember why.

18 Q. What does that mean to you?

19 A. It means nothing. I'm not sure  
20 what it means.

21 Q. You don't know what it means?

22 A. No. What it means is, in terms  
23 of related parties?

24 Q. Yes.

25 A. Oh, because I was a part of

1 PINCHUS S. ROTTENBERG

2 M.M.B.

3 Q. And why was that important  
4 information shared with Mr. Tener?

5 A. I can't remember what the  
6 context of the conversation or why that was  
7 said back then.

8 Q. And did you share that  
9 information with him because you thought it  
10 may affect his valuation?

11 A. I don't know.

12 Q. And by June of 2018, the ground  
13 rent -- the rent that Vanderbilt was paying  
14 to M.M.B. under the Vanderbilt ground lease  
15 was already set, right?

16 A. Sorry. I'm sorry?

17 Q. By June 2018 the rent that  
18 Vanderbilt had to pay to M.M.B. under the  
19 Vanderbilt ground lease was already set,  
20 right, because the lease was dated November  
21 17 --

22 A. Yes.

23 Q. So when you say that you were  
24 looking for an appropriate market ground  
25 rent for the parcel, what could you have

1 PINCHUS S. ROTTENBERG

2 been asking him to do?

3 MR. KOH: Objection.

4 A. I don't know. This is Tom Tener  
5 saying all of this. So I'm not sure what --  
6 maybe Tom Tener would have a better idea.

7 Q. Okay. But you were the one that  
8 retained him, right?

9 A. Right. So as I told you, I don't  
10 know which context, whether I wanted to get  
11 his -- just his third-party opinion, his --  
12 or this was in conjunction or this was in  
13 the context of. It was one of the two.

14 Q. Even though you reached out to  
15 Theresa you ended up working with Tom Tener,  
16 right?

17 A. Yeah.

18 Q. And do you recall why that was?

19 A. Oh, I think it's all just based  
20 on their internal scheduling, KTR's internal  
21 scheduling, whether anybody was available at  
22 that given time.

23 Q. Now, why would you have asked  
24 them to value the property without  
25 consideration of the ground lease?

1 PINCHUS S. ROTTENBERG

2 A. I'm sure, as you can see, I've  
3 asked various fore appraisals, various kind  
4 of valuation, just me, just to get a sense  
5 of how everybody is looking at it  
6 differently from a different perspective.

7 Q. Around this time were you  
8 looking for financing? I'm just trying to  
9 understand.

10 So let me ask you that, were you  
11 looking for financing for the project at  
12 this time?

13 A. I don't remember but I don't  
14 think so.

15 Q. Can you think of any other  
16 reason why you would want to have these  
17 appraisals performed, other than in  
18 connection with the FMV process under the  
19 Option Rent Addendum?

20 A. Yeah. For me to get familiar how  
21 people are looking at it.

22 Q. And any other reason besides  
23 that?

24 A. No.

25 MR. WALSH: Okay. If we can mark

PINCHUS S. ROTTENBERG

VA-010580 as Exhibit P-20. It's a cover email by Molly.SPRGRP to Tom Li. It's attaching a June 27, 2018 engagement letter from KTR Real Estate Advisors to Mr. Sam Rottenberg of Vanderbilt Atlantic Holdings. It ends at Bates number VA-010586.

(Plaintiff Exhibit 20, email attaching engagement letter dated June 27, 2018, Bates VA-010586 was received and marked on this date for identification.)

A. That's P-19?

MR. KOH: 20.

MR. WALSH: 20. It just popped up on my screen, so it should be there momentarily.

A. Okay.

Q. Whose signature is that on the third page of the agreement ending in 583? Is that Tom Li's?

A. That's Tom Li, yeah.

Q. But you were the one that requested this appraisal from KTR, right?

1 PINCHUS S. ROTTENBERG

2 A. Yeah.

3 Q. And Tom would have needed to get  
4 your authority to enter into this agreement  
5 on behalf of Vanderbilt, right?

6 A. Yes.

7 Q. Okay. In the middle of the first  
8 paragraph under where it says, "Dear  
9 Mr. Rottenberg", the first page of that  
10 agreement ending in 581, the engagement  
11 letter from KTR states, "It is our  
12 understanding that the lease with McDonald's  
13 is expiring in the near term." Do you see  
14 that?

15 A. Yeah.

16 Q. So whereas Mr. Tener had said  
17 that he was told that in an email, he's now  
18 put this into the engagement letter that  
19 Vanderbilt signed, right?

20 A. Yeah.

21 Q. So you would agree that  
22 Vanderbilt told KTR that the lease with  
23 McDonald's would be expiring in the near  
24 term, right?

25 A. I would agree that that's what

1 PINCHUS S. ROTTENBERG

2 Tom Tener alludes to.

3 Q. But Vanderbilt signed it, right?

4 A. Yeah. Sure. Vanderbilt signed  
5 but still I still agree this is Tom Tener  
6 that said it, yeah.

7 Q. Okay. But Vanderbilt didn't  
8 correct it, though, right?

9 A. No.

10 Q. So on the next page, second full  
11 paragraph, "It is understood that the  
12 intended use of this report is" --

13 A. Hold on. Where are you?

14 Q. The second page of the letter.  
15 It's Bates stamped 582, second paragraph,  
16 "It is understood".

17 A. Okay.

18 Q. It says, "It is understood that  
19 the intended use of this report is assist  
20 Vanderbilt Atlantic Holdings, LLC with  
21 certain asset management related decisions  
22 and analysis."

23 What asset management related  
24 decisions and analysis was this report for?

25 MR. KOH: Objection. Go ahead.



1 PINCHUS S. ROTTENBERG

2 A. I'm trying to refresh my  
3 recollection what this could have been.  
4 Maybe this could have been -- again, I don't  
5 remember during this junction. This could  
6 have been which appraiser to hire.

7 Q. But you don't know?

8 A. No.

9 Q. A little bit further down there  
10 are some bullet points. Do you see that?

11 A. Yes.

12 Q. And above that it says, "In  
13 addition, in order to initiate the  
14 assignment the following information, if  
15 available, should be provided as soon as  
16 possible." And the first bullet is "Copies  
17 of any leases that are on the properties."  
18 Do you see that?

19 A. I do.

20 Q. Okay. Did Vanderbilt provide a  
21 copy of the McDonald's lease to KTR?

22 A. I think you asked me that  
23 question before and I said I don't know.

24 Q. And this doesn't refresh your  
25 recollection?

1 PINCHUS S. ROTTENBERG

2 A. Only refresh my recollection to  
3 the extent that they asked that it should be  
4 provided.

5 Q. Okay. And if they asked for it  
6 it would have been pretty simple to give it  
7 to them, right?

8 MR. KOH: Objection. Go ahead.

9 A. It should be but I don't know  
10 whether that actually occurred. So I don't  
11 know.

12 Q. And can you think of a reason  
13 why it wouldn't have been provided?

14 A. No.

15 Q. Because that would impact the  
16 value of the property, right?

17 A. I don't know.

18 Q. Do you know if Vanderbilt  
19 provided the Option Rent Addendum to KTR at  
20 this time?

21 A. No. No.

22 MR. WALSH: Okay. If we could  
23 mark VA-023216, it's an email chain  
24 that goes to 023223.

25 (Plaintiff Exhibit 21, email

1 PINCHUS S. ROTTENBERG

2 string last dated August 9, 2018,  
3 Bates VA-023216 was received and  
4 marked on this date for  
5 identification.)

6 Q. If you could tell me when you've  
7 had an opportunity to open up P-21.

8 CONCIERGE: 020216?

9 MR. WALSH: 023216.

10 CONCIERGE: It's now uploading.

11 Q. Can you tell me when you're able  
12 to open it, Mr. Rottenberg? It's open on my  
13 ends.

14 A. I see it.

15 Q. So this is an email chain  
16 between you and others at KTR. On the second  
17 page, page ending 217 there's an email from  
18 Tom Tener to you and some colleagues at KTR.  
19 It's dated August 9th, 2018. He said "Sam,  
20 Shaun related to me the focus of his  
21 conversation with you about this  
22 assignment."

23 Do you recall what conversation  
24 you had with Tom's colleague Shaun about the  
25 assignment?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. In the second sentence Mr. Tener  
4 wrote, "He", Shaun, "would like us to  
5 include an analysis of the likely terms of a  
6 ground lease (under the existing zoning)."  
7 Do you see that.

8 A. Yes.

9 Q. Does that refresh your  
10 recollection about your discussion that you  
11 had with his colleague Shaun?

12 A. In Tom Tener's words, I asked  
13 Shaun to have an analysis of the terms of a  
14 ground lease under the existing zoning.

15 Q. Where do you see that?

16 A. You just read it. He explained  
17 that you would like us to include an  
18 analysis of the likely terms of a ground  
19 lease under the existing zoning.

20 Q. So is that that you told Shaun  
21 at KTR that Vanderbilt would like an  
22 analysis of the likely terms of a ground  
23 lease under existing zoning, correct?

24 A. That's what Tom said I asked  
25 for, so...

1 PINCHUS S. ROTTENBERG

2 Q. Did you ask for that?

3 A. I don't have the recollection  
4 other than what it says in here.

5 Q. Okay. Well, do you have -- I'm  
6 sorry.

7 A. Only the recollection that it  
8 says in here that I did so.

9 Q. So what terms of a ground lease  
10 could that be referring to?

11 A. Just how that would be under a  
12 ground lease.

13 Q. If you could look at the email,  
14 it's an email from Tom Tener to you dated  
15 August 9, 2018?

16 A. It's the first page?

17 Q. On the bottom of the first page.  
18 It says "Sam, what are the number of years  
19 the anticipated ground lease. Broker pay  
20 that you submitted says 99-year lease but  
21 only presents a summation of 25 years  
22 without any discounting." Do you see that?

23 A. Yeah. I don't remember this  
24 conversation, 99 years versus 25 years.

25 Q. So you don't remember whether

1 PINCHUS S. ROTTENBERG

2 you were looking for the terms of a 99-year  
3 ground lease?

4 A. No. I can't even remember  
5 looking at this now. I can't remember what  
6 was the discussion back then.

7 Q. And then the email above it  
8 looks like Tom Li responded to Tom Tener and  
9 said, "Tom, it should be a 99-year lease.  
10 Not sure what's behind the BOV logic." Do  
11 you see that?

12 A. Yes.

13 Q. And BOV, does that mean broker  
14 opinion of value?

15 A. Yes.

16 Q. And so Vanderbilt told him that  
17 it should be a 99-year lease, right?

18 A. Yes.

19 Q. And do you recall what other  
20 instructions Vanderbilt gave to KTR about  
21 that appraisal?

22 A. No.

23 Q. Okay. As a real estate broker,  
24 do you have an opinion on whether McDonald's  
25 lease would affect the value of the

1 PINCHUS S. ROTTENBERG

2 property?

3 MR. KOH: Objection, you may  
4 answer.

5 A. That's not a question that --  
6 given my role, I'm not sure I can answer  
7 that question. Just I'm not sure I would  
8 have the answer to that question.

9 Q. So you don't have an opinion as  
10 a broker?

11 A. No.

12 Q. But KTR asked for that document,  
13 right? It asked for the ground lease with  
14 McDonald's?

15 A. You showed it to me in the  
16 engagement letter that they asked for it,  
17 right?

18 Q. Right. So they asked for it,  
19 right?

20 A. Yeah.

21 Q. So does that suggest to you that  
22 the appraisers thought it could affect the  
23 value?

24 A. I think an appraiser looks at  
25 all aspects of the properties, everything

1 PINCHUS S. ROTTENBERG

2 that's encumbered on the property, involved  
3 or everything involved in the property an  
4 appraiser looks at.

5 Q. And that's because those things  
6 affect the value, right?

7 A. Yeah. It could have an affect on  
8 the value one way or the other. Everything  
9 related to a property could impact the  
10 value, of course.

11 MR. WALSH: If we can mark  
12 VA-000002?

13 THE WITNESS: What is it?

14 MR. WALSH: It's the August 30,  
15 2018 KTR Appraisal Report for 840  
16 Atlantic Avenue. If we can mark that  
17 as P-22.

18 (Plaintiff Exhibit 22, KTR  
19 Appraisal Report dated August 30,  
20 2018, Bates VA-000002 was received and  
21 marked on this date for  
22 identification.)

23 CONCIERGE: This is a larger  
24 file so it's taking a little bit  
25 longer. Okay. It's been uploaded.



1 PINCHUS S. ROTTENBERG

2 Q. Okay. Mr. Rottenberg, it's  
3 available on my end. I know it's a big file  
4 but if you can open up Exhibit 22.

5 A. 69 megabytes.

6 MR. KOH: I have it open.

7 A. Yes. I have it open.

8 Q. Okay. So this is appraisal  
9 report from KTR Real Estate Advisors for 840  
10 Atlantic Avenue dated August 30, 2018 and  
11 it's addressed to you at Vanderbilt Atlantic  
12 Holdings; is that right?

13 A. Yes.

14 Q. And the second -- if you can  
15 turn to page ending in 16, it says Purpose  
16 of Appraisal?

17 A. Page 16, okay.

18 Q. Do you see where it says Purpose  
19 of Appraisal?

20 A. The premises of the appraisal.

21 Q. No, second part down on the  
22 left-hand side.

23 A. Yes.

24 Q. And it says, "The purpose of the  
25 appraisal is to provide an estimate of the

1 PINCHUS S. ROTTENBERG

2 market value of the fee simple interest in  
3 the subject land breaking out values for the  
4 M11 zoned portions of the site and the R6B  
5 zoned portion of the site." Do you see  
6 that?

7 A. I do.

8 Q. And so you would agree that is  
9 at least one purpose of this appraisal,  
10 right?

11 A. Yeah. We talked about this  
12 before. It's the same thing as before.

13 Q. Okay. And the next sentence,  
14 "The client has requested an opinion of the  
15 market value of the fee simple interest in  
16 the subject site under the hypothetical  
17 condition that the entire site is rezoned  
18 based on the current proposals represented  
19 in the M-CROWN study." Do you see that?

20 A. Yeah.

21 Q. So that was the second purpose;  
22 is that correct?

23 A. That's what this says.

24 Q. Okay. And then the last  
25 sentence, the last sentence says, "The scope

1 PINCHUS S. ROTTENBERG

2 of work also includes of the market ground  
3 rent for the subject property."

4 A. Yes.

5 Q. So these were the three purposes  
6 of the appraisal, correct?

7 A. Yeah.

8 Q. Now, if you go down to the  
9 bottom of that page it includes a definition  
10 of fee simple estate. And it says, in part,  
11 "Absolute ownership unencumbered by any  
12 other interest or estate." Do you see that?

13 A. Yeah.

14 Q. So Vanderbilt had asked KTR to  
15 value the property as unencumbered by any  
16 other interest or estate; is that right?

17 A. A-hum.

18 Q. Is that a "yes"?

19 A. Yes, it's yes.

20 Q. So if you go to the page ending  
21 in VA-08.

22 A. Which one?

23 Q. -08. On the bottom of the page  
24 it talks about a hypothetical conditions.

25 A. Yeah.

1 PINCHUS S. ROTTENBERG

2 Q. And in the first bullet it talks  
3 about that, "The client has requested an  
4 appraisal of the subject land under the  
5 following hypothetical condition." And the  
6 first hypothetical condition is that it  
7 would be rezoned consistent with the M-CROWN  
8 zoning. Do you see that?

9 A. Yes.

10 Q. And on the next page, the bottom  
11 portion of that section says, "This  
12 appraisal includes an opinion of the market  
13 value of the fee simple interests in the  
14 subject land under the hypothetical  
15 condition that the subject property is  
16 rezoned under the M-CROWN plan as described  
17 above as of the effective date of this  
18 appraisal." Do you see that?

19 A. Yes.

20 Q. Why would that be relevant to  
21 Vanderbilt?

22 A. Similar reason why it was  
23 relevant to look at all the other  
24 appraisals, just to get a mosaic of opinions  
25 and what people think about this stuff.

PINCHUS S. ROTTENBERG

Q. So if you look lower on that page where it says Extraordinary Assumptions, and it says, "The included market values and market ground rent of this rental are based on the following extraordinary exceptions: The subject property is improved with a McDonald's restaurant. At the time of the inspection the restaurant continued operations. KTR requested a copy of the McDonald's lease but was not provided with a copy." Do you see that?

A. Yeah.

Q. Why didn't Vanderbilt provide the McDonald's lease, as their requested?

A. I don't know. You asked me that question before. I said I don't know what was behind this back then.

Q. And then at the bottom of that first Extraordinary Assumption it says, "The value conclusions contained herein are based on the extraordinary assumption that it has not exercised its renewal option and the premises is available for development to its

1 PINCHUS S. ROTTENBERG

2 highest and best use." Do you see that?

3 A. Yes.

4 Q. Okay.

5 A. You are reading what, "According  
6 to the memorandum of lease expired" --

7 Q. The sentence below that.

8 A. All right. The lease indicates  
9 the tenant has the option to extend the term  
10 of the lease, expiration of the original  
11 term, says in excess of aggregating 20  
12 years, right?

13 MR. KOH: Mr. Walsh, was  
14 referring to the following sentence in  
15 his question.

16 A. Which sentence, the value  
17 conclusion?

18 Q. I'll cut to the chase.

19 This KTR appraisal was performed  
20 under the assumption that McDonald's would  
21 not exercise its renewable option, correct?

22 A. I'm sorry?

23 MR. KOH: Objection.

24 A. I'm sorry, Brandon. I didn't  
25 hear your question.

1 PINCHUS S. ROTTENBERG

2 (Pending question is read back  
3 by the reporter.)

4 A. I don't know.

5 Q. Do you have any reason to  
6 dispute what's included in this report?

7 A. No.

8 Q. And this report was prepared at  
9 the request and under the instructions of  
10 Vanderbilt, correct?

11 A. Yes.

12 Q. Okay. And in the next  
13 Extraordinary Assumption it talks about how  
14 the 99-year ground lease is between related  
15 parties. So that was another assumption,  
16 correct?

17 A. That's what the appraisal says,  
18 yes.

19 Q. Did anyone at KTR ever ask  
20 Vanderbilt why it wanted KTR to assume there  
21 were no encumbrances on the lease when there  
22 were encumbrances?

23 A. Very possible. I don't remember.

24 Q. You don't remember. KTR  
25 performed this appraisal using the land

1 PINCHUS S. ROTTENBERG

2 sales comparison approach. Is that the  
3 method that Vanderbilt directed them to  
4 value the property at?

5 A. No, I don't think so.

6 Q. So they just did that on their  
7 own?

8 A. You'd have to ask that question  
9 of Tom Tener.

10 Q. Did Vanderbilt ever ask KTR to  
11 search for comparable ground leases as part  
12 of this appraisal?

13 A. Very possible, but I couldn't  
14 sit here and tell you one way or the other  
15 now.

16 Q. Okay. Did anyone at KTR ever  
17 inform Vanderbilt how a encumbrance might  
18 affect the value of the property?

19 A. I don't recall.

20 Q. So I'll ask it more  
21 specifically. Did anyone at KTR ever inform  
22 Vanderbilt that the McDonald's lease might  
23 impact the value of the property?

24 A. The same question as before, I  
25 said I don't remember whether they informed



1 PINCHUS S. ROTTENBERG

2 us of such.

3 Q. Okay. If you could turn to the  
4 page ending in 82.

5 A. 82 of this last exhibit?

6 Q. Yeah. It's the -- it says Ground  
7 Rent Analysis at the top. Do you see that  
8 page?

9 A. Not yet. It takes time to look  
10 close at this whole thing. Okay. I have that  
11 page.

12 Q. Okay. So this is Mr. Tener or  
13 KTR's ground rent analysis. And the third  
14 paragraph down it says, "KTR reviewed the  
15 rent reset provisions of new ground leases  
16 in Manhattan and the outer boroughs."

17 Would you agree this appears to  
18 be trying to figure out what an appropriate  
19 ground rent for the property would be?

20 A. Okay.

21 Q. Would you agree with me?

22 A. Sure.

23 Q. And for what purpose would this  
24 be relevant to Vanderbilt if it was for  
25 something other than the McDonald's lease?

1 PINCHUS S. ROTTENBERG

2 A. We talked about that before.

3 It's the same answer as I said before.

4 Q. Now, it says that KTR reviewed  
5 several ground leases and ground rent resets  
6 throughout Manhattan and the outer boroughs.

7 Did Vanderbilt provide KTR with  
8 any ground leases and ground resets, ground  
9 rent resets?

10 A. It's possible but I don't  
11 remember.

12 Q. The bottom paragraph of that, on  
13 that page about three quarters of the way  
14 down that paragraph it says, "If not for the  
15 potential appreciation" -- tell me when  
16 you're there and I'll start reading.

17 A. I see a bolded portion.

18 Q. Right above that, the two  
19 sentences above that bolded portion starting  
20 "If not for".

21 A. Yes.

22 Q. It says, "If not for the  
23 potential appreciation in land value that  
24 would result from the enactment of the  
25 M-CROWN zoning, the subject land would

1 PINCHUS S. ROTTENBERG

2 likely command a ground rent of 4.0% to 5.0%  
3 of the current land value." Do you see that?

4 A. Yeah.

5 Q. But because of the possibility  
6 of the M-CROWN rezoning Mr. Tener included  
7 that a base rent of 6.0% of the fair market  
8 value would be consistent with the market,  
9 right?

10 A. Yeah. I guess that's what he's  
11 saying.

12 Q. Okay. So he concluded that the  
13 property was more valuable because of the  
14 possibility of the M-CROWN rezoning, right?

15 A. Correct.

16 Q. And if you go to the next page,  
17 he concluded that the ground rent, the  
18 market rental value of the ground rent, with  
19 all the assumptions he was considering, was  
20 \$1,080,000 per year, right?

21 A. Yes. I'm not sure why I'm being  
22 questioned -- being questioned about the  
23 work Tom Tener has done.

24 MR. KOH: He can spend it  
25 however he chooses, Mr. Rottenberg.

1 PINCHUS S. ROTTENBERG

2 Q. Now, what did Vanderbilt do with  
3 this report once it received it?

4 A. I don't remember.

5 Q. Did Vanderbilt use this report  
6 in any way relating to the fair market value  
7 as laid out in the Option Rent Addendum to  
8 the McDonald's lease?

9 A. I don't remember. Perhaps. I  
10 don't remember.

11 Q. Did you retain any other  
12 appraisers other than BBG and KTR?

13 A. I think I previously said that,  
14 yes.

15 Q. And who were they?

16 A. I told you I don't remember who  
17 it was. There was multiples, which I can't  
18 remember who else it was. That's why I said  
19 the document is always evidence of this more  
20 than myself.

21 MR. WALSH: Just give me a  
22 moment. I want to look at some  
23 documents real quick.

24 Okay. If we can mark VA-011951,  
25 it's an email chain with an

1 PINCHUS S. ROTTENBERG

2 attachment. It's a very long document,  
3 it spans through 012047.

4 The attachment is a draft real  
5 estate appraisal report of a  
6 development site located at 838 to 844  
7 Atlantic Avenue, prepared by Republic  
8 Valuations, it's dated January 8th,  
9 2019 and says it was prepared for  
10 Vanderbilt Atlantic Holdings.

11 (Plaintiff Exhibit 23, draft  
12 real estate appraisal report dated  
13 January 8th, 2019, Bates VA-011951 was  
14 received and marked on this date for  
15 identification.)

16 CONCIERGE: I've uploaded it. It  
17 should be there now.

18 MR. WALSH: I see P-23.

19 A. Okay.

20 Q. So the cover, the first page,  
21 it's an email chain that -- the most recent  
22 email is an email from  
23 Esty@RepublicValuations. It's dated February  
24 15, 2019 and it's sent to you, Sam  
25 Rottenberg with a cc to Tom Li, subject:

1 PINCHUS S. ROTTENBERG

2 840 Atlantic Avenue, Brooklyn. It says  
3 "Attachments 840 Atlantic  
4 Avenue-appraisal.PDF. Email says, "Please  
5 see the completed draft report. Feel free to  
6 contact me with any further questions or  
7 concerns." Do you see that?

8 A. Yes.

9 Q. So Vanderbilt engaged another  
10 firm by the name of Republic Valuations to  
11 perform another appraisal of 840 Atlantic  
12 Avenue; is that correct?

13 A. That's correct.

14 Q. And the report at 9:56 shows  
15 it's dated January 8th, 2019. I'm not sure  
16 why that is, given that it's sent in  
17 February. Do you know why that is?

18 A. Again?

19 Q. The page ending in 956 shows a  
20 report date of January 18 and the email was  
21 sent February 15, 2019. Do you know why the  
22 difference in the date?

23 A. No idea.

24 Q. Okay. Do you know why this was  
25 sent to Vanderbilt in draft form?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Did Vanderbilt request that it  
4 be sent in draft form?

5 A. Oh, I know why. Because the way  
6 they do this is, they want to first get a  
7 deposit and they send a draft and when you  
8 pay in full they take off their draft  
9 portion of it.

10 Q. Do you know if this was ever  
11 paid for and you were given a final report?

12 A. No. I won't remember.

13 Q. Okay. If you could turn to the  
14 page ending in 11970, and if you could tell  
15 me when you're there?

16 A. I'm there.

17 Q. Okay. If you look at the very  
18 bottom it talks about hypothetical  
19 conditions and it says, "Based on the  
20 assumption that the property is not  
21 encumbered and the lease is ready for  
22 development." Do you see that?

23 A. Yes.

24 Q. So you also directed Republic  
25 Valuations in February 2019 to appraise the

1 PINCHUS S. ROTTENBERG

2 property as not encumbered by a lease and  
3 ready for development?

4 A. That's what Republic says that I  
5 requested, yes.

6 Q. Okay. And you don't have any  
7 reason to think that's not what you  
8 requested, right?

9 A. No.

10 MR. WALSH: All right. Actually,  
11 if we can take a short break, I just  
12 need five minutes or so. We've been  
13 going for about an hour and 15  
14 minutes, if we can just take a short  
15 five minute break, I'd appreciate it.

16 MR. KOH: Okay. We'll be back in  
17 five minutes.

18 VIDEOGRAPHER: We're off the  
19 record at 3:01 p.m. and this is the  
20 end of media 3.

21 (Recess is taken.)

22 VIDEOGRAPHER: We are back on  
23 the record at 3:14 p.m. and this is  
24 the start of Media Unit 4.

25 Q. Okay. Mr. Rottenberg, Vanderbilt



1                   PINCHUS S. ROTTENBERG  
2       had all of these appraisals performed for it  
3       that value the property without the  
4       encumbrance of the McDonald's lease. And my  
5       understanding of your testimony is that it  
6       was because Vanderbilt wanted to understand  
7       what others were valuing the property  
8       without those encumbrances; is that  
9       accurate?

10           A.       Just how they valued the  
11       property altogether.

12           Q.       But what purpose would that  
13       serve to Vanderbilt, given that it actually  
14       was encumbered by the McDonald's lease?

15           A.       Just to familiarize a little bit  
16       with how people kind of valued the property.

17           Q.       But it was valuing the property  
18       assuming a condition didn't exist that  
19       existed, and that's what I'm trying to  
20       understand.

21           A.       One -- one of the ways -- was  
22       valued only one of the ways. It wasn't only  
23       valued as unencumbered. It was valued on  
24       many different -- many different kind of  
25       options or many different...

1 PINCHUS S. ROTTENBERG

2 Q. None of the appraisals that  
3 we've been looking at considered the  
4 McDonald's lease and they all expressly  
5 actually stated that it was being valued as  
6 unencumbered.

7 I'm just trying to understand if  
8 there was any purpose or what the value to  
9 Vanderbilt having that information was,  
10 given that the encumbrance of the lease was  
11 there?

12 A. What was the value of Vanderbilt  
13 to have various appraisals for the same  
14 thing? It was the idea of seeing multiple  
15 people looking at the same thing and how  
16 everybody else is -- what's the point of  
17 everybody individually. That was the idea.

18 Q. I don't understand that, but  
19 I'll just move on.

20 So do you recall if Vanderbilt  
21 had any other appraisals, other than the  
22 ones we've looked at, besides Tom Tener's  
23 2019 reports?

24 A. The last exhibit was Republic.  
25 Wasn't the last exhibit Republic?

PINCHUS S. ROTTENBERG

MR. WALSH: Okay. So if you could mark as P-24, VA-011918 and it spans through 924.

(Plaintiff Exhibit 24, email string dated February 14, 2019, Bates VA011918 was received and marked on this date for identification.)

Q. Okay. It's an email from Molly.SPRGRP@gmail.com. It's an email from her to Tom Li dated February 14th, 2019, with an attachment. And the attachment is an engagement letter between Metropolitan Valuation Services and Vanderbilt Atlantic Holdings dated February 14, 2019. If you could tell me, P-24 is available on my end.

A. I see it.

Q. So in February of 2019 Vanderbilt engaged another appraiser, Metropolitan Valuation Services to perform another analysis on the property; is that right?

A. Yes.

Q. And Vanderbilt retained Metropolitan to conduct a review of the

1 PINCHUS S. ROTTENBERG

2 appraisals prepared by KTR and BBG in 2018,  
3 correct?

4 A. Sorry. I got distracted a bit  
5 much. Sorry.

6 Q. Vanderbilt, if you look back on  
7 the page ending 919, it's addressed to  
8 Vanderbilt and it's to Tom Li at Vanderbilt.  
9 It's signed by Tom Li on the third page. And  
10 its -- it indicates that Vanderbilt retained  
11 Metropolitan to review the KTR and BBG  
12 appraisals conducted in 2018; is that right?

13 A. Yes.

14 Q. And the bottom bullet says, "The  
15 reviewer will opine on the reasonability and  
16 credibility of the reported valued opinions  
17 and suggest areas, if any, where such  
18 conclusions maybe impacted or clarified." Do  
19 you see that?

20 A. Yes.

21 Q. And that's Tom Li's signature on  
22 the third page of the document?

23 A. Yes.

24 Q. Why did Vanderbilt -- never  
25 mind.

1 PINCHUS S. ROTTENBERG

2 So next I'd like to mark

3 VA-012456 to 483 as P-25.

4 (Plaintiff Exhibit 25, email  
5 string last dated February 26, 2019,  
6 Bates VA-012456 was received and  
7 marked on this date for  
8 identification.)

9 Q. Mr. Rottenberg, do you have P-25  
10 up?

11 A. Yeah. I see it.

12 Q. If you could flip to the page  
13 ending in 464?

14 A. Which one?

15 Q. Ending in 464.

16 A. Yes.

17 Q. And this is a report dated  
18 February 26, 2019, Metropolitan Valuation  
19 Services to your colleague Tom Li, correct?

20 A. Correct.

21 Q. And the first paragraph  
22 indicates that this is a comprehensive desk  
23 review of the appraisal report prepared by  
24 KTR. Do you see that?

25 A. Which bullet point?

1 PINCHUS S. ROTTENBERG

2 Q. Just the very first paragraph  
3 under "Dear Mr. Li".

4 A. I see that.

5 Q. So that's correct?

6 A. Yeah.

7 Q. And this would have been the  
8 August 2018 report from KTR, right?

9 A. I don't know which one.

10 Q. Well, did you have any other  
11 reports prepared by KTR at this time?

12 A. I don't know. I don't know  
13 whether at this time or the time after. I  
14 don't know.

15 Q. Okay. If you could look, turn to  
16 the page ending in 465.

17 A. Okay.

18 Q. And it goes over to 466.

19 A. 465 or --

20 Q. Well, it's both. I'm starting on  
21 the bottom of 465. I just want you to know  
22 we're going to be looking at --

23 A. The bullet point?

24 Q. Right. So it talks about the  
25 scope of the KTR appraisal. Do you see that

1 PINCHUS S. ROTTENBERG

2 on the bottom of 465?

3 A. Yes. "Purpose and scope of the  
4 KTR appraisal."

5 Q. Yes. Then it says, "The  
6 appraisal notes the following hypothetical  
7 conditions." And there's a bullet right  
8 below that. Do you see that?

9 A. Yes.

10 Q. I'll represent to you that these  
11 are verbatim from the August -- or the  
12 August 2018 KTR report and you can actually  
13 see in the header on the top left of each  
14 page it says -- it explains that it's  
15 looking at the KTR Real Estate Advisors as  
16 of August 2018. Do you see that?

17 A. Yeah.

18 Q. And on the bottom of 466, so  
19 after, you know, explaining the assumptions  
20 and hypothetical conditions, Metropolitan  
21 concluded, in the last sentence on the  
22 bottom of 466, that, "As the proposed  
23 rezoning initiative has not yet been  
24 approved, it is our opinion that this  
25 valuation scenario is highly speculative as

1 PINCHUS S. ROTTENBERG

2 of both the effective date of value and the  
3 date of the report." Do you see that?

4 A. I do.

5 Q. Do you know what Metropolitan  
6 meant by that?

7 MR. KOH: Objection.

8 A. I have no other definition, only  
9 what I read on this paragraph.

10 Q. Did you discuss that with or did  
11 anyone at Vanderbilt discuss that --

12 A. I don't remember. I don't  
13 remember discussing this at all.

14 Q. And would anyone else have  
15 discussed it?

16 A. No. Maybe Morris Missry, if  
17 anybody.

18 Q. Okay. If you can turn to the  
19 page ending in 474.

20 A. Okay.

21 Q. You'll see, if you scroll up one  
22 page, this is a discussion of KTR's ground  
23 rent analysis and this is Metropolitan  
24 Valuation's analysis of KTR ground rent  
25 analysis. And at the bottom of that section



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on 474 it says, "While we concur with the 6.0 selection for a reset, we disagree that this rate would be reflective of an initial rate against the land valuation. In this location we are of the opinion that the initial rate would be closer to 4.5 to 5.0% and no consideration would be given to any potential up-zoning as of the current date of value as this would be highly speculative without formal or at least anecdotal municipal approval." Do you see that?

A. I do.

Q. Now, did you discuss that part of Metropolitan's conclusion with Metropolitan?

A. No.

Q. Did anyone else at Vanderbilt?

A. Not as I'm aware of.

Q. If you could turn to the page ending in 468. Are you there?

A. Yes.

Q. So if you care to, you could see from the page before, this is -- the top part of 468 is the end of the executive

1 PINCHUS S. ROTTENBERG

2 summary of Metropolitan Valuation Services  
3 findings. Point 4 on 468 says, "Should the  
4 appraisal be utilized in conjunction with  
5 the ground rent reset, the highest and best  
6 use analysis as improved should consider the  
7 encumbrances in place with respect to the  
8 ground lease which precludes near term  
9 demolition. Similarly, the tenant retains  
10 additional option periods which would limit  
11 any redevelopment opportunity." Do you see  
12 that?

13 A. I do.

14 Q. Did you have any discussion with  
15 Metropolitan about that?

16 A. No. Same answer to what I  
17 answered before.

18 Q. And you reviewed this report  
19 when it came out, right?

20 A. I don't remember seeing this, as  
21 you read it to me, but I'm not sure how  
22 thoroughly I reviewed it, so...

23 Q. Well, Vanderbilt paid for it,  
24 right?

25 A. Still doesn't mean that I

1 PINCHUS S. ROTTENBERG

2 reviewed it thoroughly.

3 Q. It was sent to you, right?

4 A. What?

5 Q. Well, it was sent to you and  
6 you're the --

7 A. Yeah. It was sent to me. You see  
8 I don't remember a lot of stuff either,  
9 so...

10 Q. Okay. And you were the managing  
11 member of Vanderbilt and responsible for all  
12 decisions, right?

13 A. We've already kind of said that  
14 a long time ago.

15 Q. All right. And this is referring  
16 to the McDonald's lease, right?

17 A. I don't know.

18 Q. Okay. Well, it talks about the  
19 ground lease that precludes near term  
20 demolition. McDonald's is the only building  
21 on the property, right?

22 A. I mean, I don't know.

23 Q. You don't know?

24 A. This is what -- yeah. I assume  
25 the same way you see it I see it exactly.

1 PINCHUS S. ROTTENBERG

2 Q. Have you ever seen another  
3 building besides the McDonald's at 840  
4 Atlantic Avenue?

5 A. No, sir.

6 Q. Okay. So could it have been  
7 talking about anything else, other than the  
8 McDonald's lease?

9 MR. KOH: Objection.

10 A. Probably not.

11 Q. Probably not? How can you not  
12 answer that question definitively?

13 MR. KOH: Objection. He's  
14 answered the question. Please stop  
15 badgering the witness. If you want to  
16 make an argument, make an argument at  
17 some other time.

18 Q. So it's your testimony that  
19 there may be other buildings besides  
20 McDonald's on the property that you've never  
21 seen?

22 MR. KOH: Objection,  
23 mischaracterizes the testimony.

24 A. No.

25 Q. Are you aware of any other

1 PINCHUS S. ROTTENBERG

2 ground leases for the property besides  
3 Vanderbilt's own ground lease that this  
4 could possibly be referring to?

5 A. No.

6 Q. So wouldn't you agree that in  
7 February 2019 Metropolitan Valuation  
8 Services told you that if you were going to  
9 utilize KTR's appraisal, that they would  
10 need to consider the encumbrance of the  
11 McDonald's lease in its analysis for the  
12 rent reset analysis?

13 MR. KOH: Objection.

14 A. Again, I didn't kind of hear the  
15 last part of that statement or the question.

16 (Pending question is read back  
17 by the reporter.)

18 Q. Okay. Didn't you need to  
19 consider the encumbrance of the McDonald's  
20 lease in conjunction with the ground rent  
21 reset process?

22 MR. KOH: Same objection.

23 A. I confirm they put it in the  
24 report. That's what I confirm.

25 Q. Okay. And this report was a

1 PINCHUS S. ROTTENBERG

2 report that Vanderbilt commissioned,  
3 correct.

4 A. Yes.

5 Q. Did you ever share this report  
6 with KTR?

7 A. I can't recall.

8 Q. If we could flip back to the  
9 very first page of that exhibit, it's the  
10 page ending in 456. Tell me when you're  
11 there.

12 A. 12456?

13 Q. Yes.

14 A. Okay.

15 Q. This report was sent to you by  
16 David Lyon at Metropolitan Valuation  
17 Services on February 26, 2019, right?

18 A. Okay.

19 Q. Is that right?

20 A. Yeah. That's what the document  
21 says.

22 Q. And the report was also sent to  
23 Morris Missry; isn't that right?

24 A. Morris Missry I see is copied on  
25 this email, yes.

1 PINCHUS S. ROTTENBERG

2 Q. And Tom Li?

3 A. Yes.

4 Q. Did Vanderbilt have any followup  
5 discussions with Metropolitan Valuation  
6 Services about this analysis?

7 A. I don't remember.

8 Q. You don't remember?

9 A. No.

10 Q. And in the second paragraph of  
11 his email, the second sentence says, "If I  
12 remember correctly, the issue of the ground  
13 rent reset was intentionally not part of the  
14 initial engagement for either KTR or BBG."  
15 Do you see that?

16 A. Yes.

17 Q. So he's talking about the  
18 McDonald's lease there, right?

19 A. That's his assertion, I guess.

20 Q. But he's talking about the  
21 McDonald's lease and the Option Rent  
22 Addendum, right?

23 MR. KOH: Objection.

24 A. I don't know what he's talking  
25 about. I guess so.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. The next sentence, "In  
3 that regard, it would be my opinion that  
4 both the appraisal reports or one or the  
5 other depending on your decision to use  
6 either or both in your preliminary  
7 negotiations with McDonald's or if you are  
8 prepared to exchange either or both as per  
9 the ground lease reset schedule would need  
10 to be updated to a current date of value and  
11 additional market data would need to be  
12 reviewed/included." Do you see that?

13 A. Yes.

14 Q. So it seems that Vanderbilt  
15 discussed the McDonald's Option Rent  
16 Addendum with Metropolitan, correct?

17 A. That's what it appears.

18 Q. And did Vanderbilt provide  
19 Metropolitan with the McDonald's lease?

20 A. I don't know.

21 Q. And in the closing paragraph he  
22 concluded, "In my opinion the KTR in its  
23 current form is slightly more credible." Do  
24 you see that?

25 A. The last paragraph you're



1 PINCHUS S. ROTTENBERG

2 talking about, right?

3 Q. Yeah.

4 A. Yeah, I see that.

5 Q. And so, did this form -- did  
6 this report and analysis impact Vanderbilt's  
7 decision to retain KTR for the fair market  
8 value process under the Option Rent  
9 Addendum?

10 A. I don't know but it makes a ton  
11 of sense, but I don't know whether that  
12 triggered that. I can't remember.

13 Q. Okay.

14 A. How many breaks are we allowed  
15 to have?

16 Q. If you need a break, we can take  
17 a break.

18 A. No. I'm thinking out loud. I  
19 want to break at four o'clock.

20 Q. That's absolutely fine. We can  
21 plan on that.

22 If we could mark VA-012503, it  
23 spans through 521. That will become P-26.

24 (Plaintiff Exhibit 26,

25 Metropolitan Desk Appraisal dated

1 PINCHUS S. ROTTENBERG

2 February 27, 2019, Bates VA-012503 was  
3 received and marked on this date for  
4 identification.)

5 Q. This is a Metropolitan Valuation  
6 Services report dated February 27, 2019.  
7 It's addressed to Vanderbilt Atlantic  
8 Holdings, Tom Li, subject line:  
9 Comprehensive Desk Review of the Appraisal  
10 of 840 Atlantic Avenue BBG with the report  
11 date of July 9, 2018.

12 Tell me when you have that open,  
13 Mr. Rottenberg.

14 MR. KOH: It's not uploaded yet.

15 MR. WALSH: I'm not seeing it  
16 either.

17 A. I'm getting tired this time of  
18 day.

19 Q. It's understandable. So if we  
20 need to take more frequent breaks, just  
21 speak up. I'm not trying to wear you down  
22 despite what you might think, I'm really  
23 not. I'm getting tired too.

24 A. This is a big file coming? The  
25 anticipation leading up to this file --

1 PINCHUS S. ROTTENBERG

2 Q. It's only 18 pages. It must just  
3 be a large file.

4 A. I'm holding my breath what's  
5 coming.

6 MR. KOH: What's the date on  
7 this?

8 MR. WALSH: It's dated February  
9 27, 2019. It looks like it's only six  
10 months. Actually, did we lose --  
11 Tevin, is it just giving you a hard  
12 time?

13 CONCIERGE: I couldn't find it.  
14 Could you repeat that file date?

15 MR. WALSH: Sure. It's  
16 VA-012503.

17 CONCIERGE: Okay.

18 THE WITNESS: There is somebody  
19 else joining previously that is not on  
20 this call anymore.

21 MR. WALSH: Okay. So P-26, it's  
22 there. Okay.

23 Q. Mr. Rottenberg, if you can open  
24 up P-26.

25 A. I see it.

1 PINCHUS S. ROTTENBERG

2 Q. And so, after that long wait,  
3 you would agree that Vanderbilt also  
4 received a report from Metropolitan  
5 Valuation Services reviewing the 2018 BBG  
6 report, right?

7 A. Yes.

8 Q. And this report, do you recall  
9 reviewing this report?

10 A. Actually, no.

11 Q. Okay. So other than KTR, BBG,  
12 Republic, the reviews performed by  
13 Metropolitan Valuation Services, did  
14 Vanderbilt retain any other appraisers to  
15 appraise the property under any method or  
16 for any reason during the 2018 to 2019 time  
17 period?

18 MR. KOH: Objection.

19 A. Not to my knowledge.

20 Q. Okay.

21 A. Isn't that enough?

22 MR. KOH: That's fine. Go ahead.

23 Q. So you're not knowledgeable  
24 about whether that is true or not?

25 A. No. What I said is I don't know

1 PINCHUS S. ROTTENBERG

2 of any others. That's what I said.

3 Q. Who would know of any others?

4 A. I would know and maybe Tom Li.

5 Q. Did Vanderbilt ever ask  
6 Metropolitan Valuation Services to review  
7 Tom Tener's April 2019 letter opinion of  
8 value?

9 A. I'm sorry. Could you please  
10 repeat that?

11 Q. Did Vanderbilt ever engage  
12 Metropolitan Valuation Services to review or  
13 evaluate Tom Tener, KTR's April 2019 letter  
14 opinion of value?

15 A. I can't remember. I think the  
16 document says what they -- what they were  
17 assigned for. So whatever is in the letter,  
18 whatever is outlined. I wouldn't know.

19 Q. I'm just asking because I have  
20 not seen any other Metropolitan reviews and  
21 this is dated February 2019. What I'm trying  
22 to understand is whether Metropolitan was  
23 ever engaged by Vanderbilt to review KTR's  
24 April 2019 report?

25 A. As I told you, I don't know. I

1 PINCHUS S. ROTTENBERG

2 can't make a distinction the dates and  
3 times, so that's why I don't know.

4 Q. And did Vanderbilt ever ask  
5 anyone else to engage either Metropolitan or  
6 another appraiser to review any of KTR's  
7 2019 reports?

8 A. Not to my knowledge.

9 Q. Okay. And do you know when  
10 Vanderbilt shared the Option Rent Addendum  
11 to the lease with KTR?

12 A. No. I think that question was  
13 asked before, no.

14 MR. WALSH: If we could mark  
15 VA-016358, it's 016358.

16 (Plaintiff Exhibit 27, email  
17 string dated last February 25, 2019,  
18 Bates VA-016358 was received and  
19 marked on this date for  
20 identification.)

21 CONCIERGE: Please stand by.  
22 There we are.

23 Q. So this is a -- it's an email  
24 with an attachment that spans through  
25 016360. It's an email from Tom Li to Shaun

1 PINCHUS S. ROTTENBERG

2 test and Tom Tener at KTR dated February  
3 25th, 2019, and attached to it is the  
4 two-page Option Rent Addendum to the  
5 McDonald's lease. Do you see that?

6 A. It's still loading, actually.  
7 It's giving me a signal that it's loading.  
8 Now I have it.

9 Q. So you're looking P-27?

10 A. Yes.

11 Q. Okay. So it appears that by  
12 February 25th, 2019 Vanderbilt provided the  
13 Option Rent Addendum to the McDonald's lease  
14 to KTR, right?

15 A. So that's the answer to the  
16 question that you asked me before. That's  
17 the date that it was.

18 Q. So this is the first time that  
19 Vanderbilt shared this Option Rent Addendum  
20 to KTR?

21 A. As I keep on saying, I would  
22 only know what I see here.

23 Q. And what did Vanderbilt share  
24 with KTR about this Option Rent Addendum.

25 MR. KOH: Objection?

1 PINCHUS S. ROTTENBERG

2 A. I'm not sure I understand the  
3 question.

4 Q. So Vanderbilt sends the Option  
5 Rent Addendum to KTR. What discussions did  
6 Vanderbilt and KTR have about this Option  
7 Rent Addendum?

8 A. I guess go through the Option  
9 Rent Addendum and go through what's in  
10 there.

11 Q. And who did that?

12 A. Myself, probably and Tom.

13 Q. So it would be the two of you?

14 A. Yes.

15 Q. And what do you remember about  
16 that conversation?

17 A. I don't know. I wouldn't  
18 remember anything about that conversation  
19 because that wasn't one conversation.

20 Q. How many conversations --

21 A. Many conversations.

22 Q. And what do you remember about  
23 those conversations generally?

24 A. The discussion about the Option  
25 Rent Addendum and how that Option Rent



1 PINCHUS S. ROTTENBERG

2 Addendum.

3 Q. What do you mean? There were  
4 many conversations about the Option Rent  
5 Addendum. So what specifically did you  
6 discuss during those conversations?

7 A. Like about market value.

8 Q. So why did that take many  
9 conversations?

10 MR. KOH: Objection.

11 A. I don't know why. I don't know  
12 why it took many conversations but it took.

13 Q. So did -- was KTR asking  
14 questions about how the lease was supposed  
15 to require the fair market value be  
16 calculated?

17 A. No. KTR didn't ask me any  
18 questions.

19 Q. Did they ask anyone at  
20 Vanderbilt?

21 A. I don't know. I don't think so.

22 Q. If they didn't have any  
23 questions about it what are all the  
24 conversations about it? That's what I'm  
25 trying to understand.

1 PINCHUS S. ROTTENBERG

2 A. Like, I don't know, like, what  
3 the fair market value was and, like, you  
4 know, how to calculate -- I don't know.

5 Q. So they were asking questions  
6 about how to calculate it?

7 A. They were not asking any  
8 questions.

9 Q. Were you asking any questions?

10 A. I don't remember.

11 Q. And it was just you and Tom Li  
12 that were involved in the conversations?

13 A. Yes. Maybe Morris Missry, yes.

14 MR. WALSH: All right. If we  
15 could mark VA-015989, it runs through  
16 996. This will be P-28. It is an email  
17 from Abel Santamaria at Wachtel  
18 Missry.

19 (Plaintiff Exhibit 28, email  
20 string last dated March 12, 2019,  
21 Bates VA-015989 was received and  
22 marked on this date for  
23 identification.)

24 A. Just keep in mind, the four  
25 o'clock if you are going to be during a

1 PINCHUS S. ROTTENBERG

2 question, I think, so...

3 Q. We'll --

4 A. I just need, like, 10 to 15  
5 minutes, if that's okay.

6 Q. Sure. So this is an email from  
7 Abel Santamaria from Wachtel Missry, LLP  
8 sent on March 12, 2019 to Tom Tener at KTR  
9 with a copy to Tom Li, Morris Missry and Sam  
10 Rottenberg, subject: Sent on behalf of  
11 Morris Missry, and then it has an  
12 attachment. The attachment is an engagement  
13 letter from KTR to Morris Missry at Wachtel  
14 Missry dated March 8, 2019. Tell me when you  
15 have that up.

16 A. I see it.

17 Q. Okay. So unlike the other  
18 agreements we looked at between -- for  
19 appraisers, this retention -- this  
20 engagement letter is between Vanderbilt's  
21 counsel, Morris Missry and KTR. Do you  
22 recall why that was?

23 A. Why?

24 Q. Why did Wachtel Missry engage  
25 KTR for this as opposed to Vanderbilt?

1 PINCHUS S. ROTTENBERG

2 A. I don't know.

3 Q. Who would know?

4 A. Tom Tener would know, Morris  
5 Missry would know and maybe Tom Li would  
6 know.

7 Q. Why wouldn't you know?

8 A. Because I don't remember. I  
9 should know too, I did know but I don't  
10 remember.

11 Q. And this is the retention  
12 agreement for KTR to perform the work on  
13 behalf of Vanderbilt required by the Option  
14 Rent Addendum to the McDonald's lease,  
15 correct?

16 A. Yeah. I think so.

17 Q. Is that a "yes"?

18 A. Yes. I mean, I guess this is the  
19 later one, right? I'm not sure about dates,  
20 but it's the later one, that's why. I'm not  
21 sure, but...

22 Q. If you could look, second full  
23 paragraph, about halfway down it says, "It  
24 is anticipated that the FMV --."

25 A. Which page?

1 PINCHUS S. ROTTENBERG

2 Q. Page ending in 990, the first  
3 page of the engagement letter.

4 A. Second paragraph.

5 Q. About halfway down the  
6 right-hand side "It is anticipated that the  
7 FMV --."

8 A. Oh, yeah. I see it.

9 Q. Okay. So it says, "It is  
10 anticipated that the FMV will be based on a  
11 standard market data approach technique for  
12 valuing vacant land (the sales comparison  
13 approach)." Did I read that right?

14 A. Yes.

15 Q. And do you know why the sales  
16 comparison approach was identified in here?

17 A. No.

18 Q. Two lines down it says,  
19 "Additionally, KTR will prepare a detailed  
20 work file adequate to illustrate the sales  
21 comparison approach and analysis of the  
22 comparable ground leases utilized to  
23 estimate the FM." Do you see that?

24 A. Yes.

25 Q. Do you know if KTR ever provided

1 PINCHUS S. ROTTENBERG

2 an analysis of the comparable ground leases  
3 utilized to estimate the FMV?

4 MR. KOH: Objection. Go ahead  
5 and answer.

6 A. The question is whether KTR  
7 valued this with sales -- with comps?

8 (Pending question is read back  
9 by the reporter.)

10 A. Whether they used comps? Is that  
11 the question?

12 MR. KOH: Listen to the question  
13 and answer the question that was  
14 asked. If you don't understand it ask  
15 him to explain it again.

16 (Pending question is read back  
17 by the reporter.)

18 A. I don't think so. I don't think  
19 so but I don't know.

20 Q. On the second page right above  
21 the bullets it says, "In order to initiate  
22 the assignment the following, if available,  
23 should be provided as soon as possible."

24 And again they ask for any leases that  
25 encumber the properties.

1 PINCHUS S. ROTTENBERG

2 Did Vanderbilt give a copy of  
3 the McDonald's lease to KTR at that time?

4 A. I believe they did. Although,  
5 I'm not sure again the second one I believe  
6 they did.

7 Q. Okay. Did you or anyone else at  
8 Vanderbilt ever ask KTR why they needed a  
9 copy of any leases that encumbered the  
10 properties?

11 A. What?

12 Q. Did you or anyone else at  
13 Vanderbilt asked KTR why they needed copies  
14 of leases that encumbered the properties?

15 A. I don't know.

16 MR. WALSH: We can take a break.  
17 It's four o'clock. How much time do  
18 you need, Mr. Rottenberg?

19 THE WITNESS: 15 minutes, please.

20 MR. WALSH: We'll come back at  
21 4:15. Thank you.

22 VIDEOGRAPHER: We're off record  
23 at four p.m.

24 (Recess is taken.)

25 VIDEOGRAPHER: We are back on

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2 the record at 4:18 p.m. This starts  
3 the beginning of media 5.

4 Q. Mr. Rottenberg, did you have any  
5 discussions with anyone during the break?

6 A. About this?

7 Q. Did you have any discussions  
8 with anyone during the break?

9 A. Yes.

10 Q. Did you have any discussions  
11 with Tom Li?

12 A. No.

13 Q. Anyone else at Vanderbilt?

14 A. No.

15 Q. Did you speak with anyone about  
16 anything relating to 840 Atlantic during the  
17 break?

18 A. No.

19 Q. Mr. Rottenberg, are you familiar  
20 with the New York Court of Appeals decision  
21 in 936 Second Avenue V. Second Corporate  
22 Development Corp.?

23 A. No.

24 Q. I'll refer to it as the Second  
25 Avenue case and it's described in our --



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2 have you reviewed our complaint in this  
3 case?

4 A. I know it's described but I'm  
5 not sure what it is.

6 Q. So it basically talks about, you  
7 know, under what circumstances a property  
8 that is encumbered by a lease, under what  
9 circumstances appraisal needs to consider  
10 the encumbrance of the lease in the  
11 valuation.

12 Are you familiar with there  
13 being a case that lays out some rules as to  
14 when an encumbrance of a lease or zoning --

15 A. I've heard that terminology  
16 about that case but I'm not familiar with  
17 that case and I have no idea what it is.

18 Q. So --

19 A. I leave this to the attorneys  
20 and appraisals.

21 Q. So have you ever been involved  
22 in any discussions with KTR about whether  
23 the encumbrance of the lease and current  
24 zoning needs to be considered in the FMV  
25 process under the Option Rent Addendum?

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2 A. I can only say what I remember  
3 about that topic is that there has been  
4 various discussions, whether you have to  
5 take the encumbrance of the lease into  
6 account or not, various opinions on that  
7 matter and I can't even recall who had which  
8 opinion at which point. You know, kind of  
9 to me this is...

10 Q. So do you remember any specific  
11 discussion with Tom Tener or anyone else at  
12 KTR about that?

13 A. No. I remember having general  
14 discussions but not specific discussions.

15 MR. WALSH: Okay. If we can mark  
16 VA-000958. It's a one-page email from  
17 Tom Tener to Morris Missry with a copy  
18 to Sam Rottenberg dated April 1st,  
19 2019. Subject: Question.

20 (Plaintiff Exhibit 29, email  
21 dated April 1, 2019, Bates VA-000958  
22 was received and marked on this date  
23 for identification.)

24 Q. While we're waiting for that, it  
25 looks like that document is now marked as

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2 P-29.

3 A. I see it.

4 Q. So just before we get to this  
5 document, who else was involved in those  
6 discussions that you were just describing  
7 about whether the encumbrance of the lease  
8 needed to be considered?

9 A. The same people that I said  
10 before.

11 Q. And who is that?

12 A. It's myself, Morris Missry and  
13 Tom Li.

14 Q. And what about Tom Tener?

15 A. And Tom Tener, yes.

16 Q. So you have had discussions with  
17 Tom Tener about this specific issue?

18 A. Yeah.

19 Q. Okay. So looking at what's been  
20 marked as P-29, Tom Tener sent an email to  
21 Morris Missry with a copy to you on April  
22 1st saying, "Morris, are you available to  
23 quickly discuss a question that I have about  
24 the language of the lease?" Do you see  
25 that?

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2 A. Yes.

3 Q. And you were copied. Do you  
4 recall what he wanted to talk about?

5 A. No. That was an email from Tom  
6 Tener to Morris Missry.

7 Q. Okay. But you were copied on it.  
8 So did you ever ask --

9 A. True.

10 Q. Did you ever ask what the  
11 question was about?

12 A. I might have asked.

13 Q. You just don't remember?

14 A. No.

15 Q. Do you know what his question  
16 was?

17 A. No.

18 Q. Do you know if Morris Missry and  
19 Tom discussed this question?

20 MR. KOH: Objection. Go ahead.

21 A. I don't know what it is, so I  
22 don't know what they could have asked.

23 Q. So in preparation for today's  
24 deposition, did you have any discussions  
25 about -- with Morris Missry about what this

1 PINCHUS S. ROTTENBERG

2 question was about?

3 A. No.

4 MR. WALSH: So I'd like to mark  
5 VA-000699 and it's a document that  
6 goes through 703. It's an email from  
7 Tom Tener to Morris Missry subject:  
8 Confidential and attaching -- it's  
9 sent Monday, April 1st, 2019 at 4:28  
10 p.m. And just as a reminder, P-29,  
11 the document we were just looking at,  
12 what is the same day but earlier at  
13 9:46 a.m.

14 (Plaintiff Exhibit 30, email  
15 dated April 1, 2019 with attached  
16 Appellate Decision, Bates VA-000699  
17 was received and marked on this date  
18 for identification.)

19 Q. Tell me when you have a chance  
20 to look P-930.

21 A. Yes.

22 Q. And Tom says, "Morris, this is  
23 the Appellate Court decision that I  
24 mentioned in our conversation." And he  
25 attaches a copy of that Second Avenue case

1 PINCHUS S. ROTTENBERG

2 that I mentioned earlier. Do you see that?

3 A. Yes.

4 Q. Does this refresh your  
5 recollection about what question Tom Tener  
6 asked about earlier that day?

7 A. No. I never saw this. I don't  
8 remember ever seeing this.

9 Q. Did you have any discussions  
10 with Tom that day about this case?

11 A. It's possible but I don't  
12 remember.

13 Q. Did anyone ever make you aware  
14 that Tom was asking questions about the  
15 Second Avenue case?

16 A. It's possible but I can't  
17 remember.

18 Q. Would anyone else at Vanderbilt  
19 have been told that Tom was inquiring about  
20 the Second Avenue case and its  
21 applicability to --

22 A. Same guys that I keep alluding  
23 to.

24 Q. So either you or Tom Li?

25 A. Yeah.

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2 Q. Nobody else?

3 A. No, not as of -- not what I can  
4 say, no.

5 Q. Did you have any discussions  
6 with Morris Missry to prepare for this  
7 deposition?

8 A. No.

9 Q. And the conversation that's  
10 mentioned in this P-30, do you recall if you  
11 were part of that conversation, when it says  
12 "this is the decision that I mentioned in  
13 our conversation?"

14 A. No.

15 Q. You don't recall?

16 A. No.

17 Q. Is it possible that you were  
18 part of that conversation?

19 A. Sure.

20 MR. KOH: Objection.

21 Q. So if we can mark -- before I  
22 mark something else, did you or did  
23 Vanderbilt have conversations about whether  
24 the Second Avenue case should apply to the  
25 appraisal before Tom Tener completed his

1 PINCHUS S. ROTTENBERG  
2 initial April 2019 letter opinion of value?

3 A. I, to date, can't remember  
4 having conversations about that altogether.  
5 So I'm not sure what you're asking me for.

6 MR. WALSH: Okay. If we can mark  
7 VA-001753 to 54 as P-31. It's email  
8 chain between Tom Tener and Morris  
9 Missry on April 1st. It's a  
10 continuation of the email chain that  
11 started at P-30.

12 CONCIERGE: Could you repeat  
13 that file name?

14 MR. WALSH: Sure. It's  
15 VA-001753.

16 (Plaintiff Exhibit 31, email  
17 string dated last April 1, 2019, Bates  
18 VA-001753 was received and marked on  
19 this date for identification.)

20 Q. So Mr. Rottenberg, can you tell  
21 me when you've got that open?

22 A. I have it open.

23 Q. Okay. Have you ever seen this  
24 email correspondence before?

25 A. I never say to Tom Tener saying



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2 to Morris Missry like he's the best. Like,  
3 where is that coming from? First time I'm  
4 seeing this. I didn't know that they thought  
5 about Morris Missry so highly, as he says  
6 he's the best.

7 Q. So you've never seen this email  
8 chain before?

9 A. I can't remember seeing it, no.  
10 He probably wouldn't write this if I would  
11 have seen it.

12 Q. Why is that? Do you disagree  
13 that Tom is the best?

14 A. No. Just kidding. Just kidding.

15 Q. So does this refresh your  
16 recollection about whether you had any  
17 conversations around this time, meaning  
18 before Tom Tener completed his April 2019  
19 letter opinion of value about the  
20 applicability of the rule announced in the  
21 Second Avenue case and whether encumbrances  
22 needed to be considered in the analysis  
23 required by the Option Rent Addendum to the  
24 lease?

25 A. I'm not sure I followed the

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2 whole length of your question. But is that  
3 a different question than you asked before;  
4 whether I have knowledge and I said I didn't  
5 or --

6 Q. Well, I'm asking if this  
7 refreshes your recollection about whether  
8 you had any discussions with anybody about  
9 the applicability of the rule announced in  
10 that case before Tom completed his April  
11 2019 letter opinion of value?

12 A. No. I told you I remembered  
13 hearing about that case and referenced that  
14 Second Avenue case but that's the extent I  
15 bothered to know or wanted even to know,  
16 so...

17 Q. And the Metropolitan Valuation  
18 Services report that we looked at before  
19 specifically alerted you that encumbrance of  
20 the lease would need to be considered by Tom  
21 for purposes of his analysis under the  
22 Option Rent Addendum to the lease, right?

23 MR. KOH: Objection.

24 A. You talked about that before, so  
25 I don't know what's any different now, so...

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2 Q. And did you have any  
3 conversation, did you share that factual  
4 information with Morris Missry about  
5 Metropolitan's conclusion?

6 A. Did I -- I thought he was -- I  
7 think he was a party -- I think he got it  
8 shared directly from them.

9 Q. So he saw it too, right?

10 MR. KOH: Objection.

11 A. I don't know what he saw and  
12 what I didn't -- what he saw or what he  
13 didn't saw.

14 Q. All right. Do you remember  
15 having any conversations --

16 A. No.

17 Q. Let me finish.

18 Do you remember having  
19 conversations with Morris about  
20 Metropolitan's conclusion that the fair  
21 market value analysis under the Option Rent  
22 Addendum needed to consider encumbrances?

23 A. No. And I think when you read to  
24 me that paragraph that you allude to, I said  
25 then I didn't remember even kind of seeing

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2 it, so but I don't think that is Meyer would  
3 have agreed with Tom Tener's assertion that  
4 you are the best addressed to Morris Missry.

5 MR. KOH: Let's stay focused on  
6 the questions here.

7 THE WITNESS: It's getting late  
8 in the day, Howard. You know that,  
9 right?

10 MR. KOH: That's why I'm getting  
11 nervous.

12 Q. Do you have any understanding of  
13 why Tom was asking about the applicability  
14 of the case?

15 A. If I have any idea?

16 MR. KOH: Objection. Go ahead.

17 Q. Yes.

18 A. Yeah. It's whether you have to  
19 take a lease into account or not,  
20 encumbrances of the lease.

21 Q. And Tom was asking that question  
22 because it could affect value, right?

23 MR. KOH: Objection.

24 A. I guess. I don't know why the  
25 reason. I can't talk to Tom Tener's

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2 thinking.

3 Q. And in his April 2019 letter  
4 opinion of value, Tom did not consider the  
5 encumbrance of the lease because Morris  
6 Missry told him not to, isn't that right?

7 MR. KOH: Objection.

8 A. You got to ask that question to  
9 Tom Tener, his reasonings.

10 Q. But he didn't -- he didn't  
11 consider it; isn't that right, he didn't  
12 consider the encumbrances in his analysis?

13 A. This is all that Tom did.

14 MR. KOH: Objection.

15 A. I'm not talking about what Tom  
16 Tener did or did not do.

17 Q. So what is your understanding of  
18 what Tom did?

19 A. I have no understanding other  
20 than I got him to appraise the property and  
21 he did whatever he needed to do.

22 Q. And you had him appraise the  
23 property without considering the  
24 encumbrances, right?

25 MR. KOH: Objection.

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2 A. Can you please repeat that  
3 question?

4 (Pending question is read back  
5 by the reporter.)

6 MR. WALSH: And just to clarify,  
7 I'm saying and you had him appraise  
8 the value of the property without  
9 considering the encumbrances; isn't  
10 that right?

11 MR. KOH: Same objection.

12 A. I -- whatever he did, he did. I  
13 just had him appraise the property.

14 Q. So you didn't give him any  
15 instructions?

16 A. No.

17 Q. So how did Tom understand -- how  
18 did Tom know what he needed to do if  
19 Vanderbilt wasn't instructing him?

20 A. He's an appraiser, not me.

21 Q. So you left it to Tom to  
22 determine how the property should be  
23 appraised in accordance with the Option Rent  
24 Addendum to the lease?

25 A. I left it to Tom and to the

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2 attorney, yes.

3 Q. So did you have discussions with  
4 your attorney about this?

5 MR. KOH: Can I get some  
6 clarification as to which attorney you  
7 are referring to?

8 Q. Well, I assume, Mr. Rottenberg,  
9 you are talking about -- you're saying you  
10 left it to Tom Tener and the attorney; are  
11 you referring to Morris Missry?

12 A. Right.

13 MR. KOH: Thank you.

14 Q. So did you have discussions with  
15 Tom -- with Morris Missry about the  
16 instructions to be given to Tom Tener?

17 A. I vaguely remember having  
18 discussions about that.

19 Q. And what do you remember about  
20 those discussions?

21 A. Just discussing it, whether to  
22 take this into account or not. As I said  
23 before, there is various opinions that I --  
24 that, you know, went throughout this whole  
25 process and I don't remember which opinion

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2 at which point anybody has and I think even  
3 one party himself could have different  
4 opinions at different times, so...

5 Q. Okay. What is Vanderbilt's  
6 position about whether the Option Rent  
7 Addendum requires the fair market value to  
8 be determined with consideration of the  
9 encumbrances on the property?

10 MR. KOH: Objection. Go ahead  
11 and answer to the extent you can.

12 A. I don't think Vanderbilt has an  
13 opinion. It's an opinion of appraisers  
14 and/or attorneys.

15 Q. So Vanderbilt doesn't have a  
16 position as to whether encumbrances needed  
17 to be considered under the fair market value  
18 process outlined in the Option Rent  
19 Addendum?

20 A. I don't think so. I mean, I  
21 defer to attorneys and appraisers on that  
22 matter.

23 Q. But I'm asking you what  
24 Vanderbilt's position is?

25 A. I don't have a position, other



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2 than what I heard from my professionals.

3 Q. So Vanderbilt doesn't have a  
4 position?

5 A. Other than what I heard from  
6 third parties, from guys that I hired that I  
7 defer to.

8 Q. So what have you heard?

9 A. I heard various discussions  
10 relating to that matter.

11 Q. And what do you mean by that?

12 A. Various discussions, whether you  
13 have to take into -- the encumbrances of the  
14 lease into account or not.

15 Q. And based upon those  
16 discussions, what is your understanding?

17 A. I have no understanding.

18 MR. KOH: Objection. Go ahead.

19 A. As I said, I defer to them,  
20 so...

21 Q. What is Vanderbilt's position  
22 regarding whether a potential rezoning needs  
23 to be considered in determining the FMV  
24 under the Option Rent Addendum?

25 A. It's the same answer as before,

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2 I defer to --

3 Q. You defer? I'm sorry.

4 A. I defer to the professionals  
5 that I retained for this.

6 Q. So Vanderbilt has no position?

7 MR. KOH: Objection. Go ahead  
8 and answer.

9 A. Your question is an opinion  
10 related to the fair market value?

11 Q. I'm asking what is Vanderbilt's  
12 position regarding whether a potential  
13 rezoning of the property needs or can be  
14 considered in determining the FMV on the  
15 property under the Option Rent Addendum?

16 MR. KOH: Same objection.

17 A. I don't know.

18 Q. So Vanderbilt doesn't have a  
19 position?

20 MR. KOH: Same objection. And  
21 we're asking and answering the same  
22 question a lot now. You can answer it  
23 one more time, Mr. Rottenberg.

24 A. I don't know. I mean...

25 MR. WALSH: So you don't know.

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Okay. If we can mark VA-001940, it spans through 1955. This is the KTR report dated April 15, 2019.

(Plaintiff Exhibit 32, KTR appraisal report dated April 15, 2019 Bates VA-001940 was received and marked on this date for identification.)

Q. By the way, who did Morris Missry represent in this process?

A. Myself.

Q. Vanderbilt?

A. Oh, I can't remember who the retainer was, whether it's Vanderbilt or myself or SPR Group.

Q. But Morris Missry was speaking on behalf of Vanderbilt when he was talking to Tom Tener, right?

A. Again, I don't remember what was the retainer necessarily, kind of how that was outlined, whether it was SPR Group or myself or Vanderbilt.

Q. So you don't know whether Morris Missry was --

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2 A. I hired Morris Missry. I don't  
3 know which fashion that was, I need to say.  
4 I don't know how that went, you know, how  
5 that went about.

6 Q. Okay. If you can look at P-32,  
7 April 15, 2019 KTR.

8 A. Yes.

9 Q. So this is the first report that  
10 Tom Tener of KTR prepared for the FMV  
11 process under the McDonald's lease, right?

12 A. I don't know which one is the  
13 first, the second. So I really don't know  
14 the dates, but if you tell me that's the  
15 first, okay.

16 Q. And on the page ending in  
17 VA-1944, KTR concludes that the fair market  
18 rental value of the property as of April 8,  
19 2019 is \$1,348,000 per year. So that the  
20 annual rental for the first extension period  
21 described in Article 13 of the McDonald's  
22 lease is 80% of the FMV or \$1,078,400 per  
23 year; is that correct?

24 A. Yes.

25 Q. And KTR used the land sales

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2 comparison approach to prepare this report;  
3 is that correct?

4 A. I don't know. I have to look.

5 Q. Have you ever reviewed this  
6 report?

7 A. Yeah. I'm sure I did. I wouldn't  
8 remember now but I'm sure I did.

9 Q. Okay. And if you take a look at  
10 the page ending in 942, the second full  
11 paragraph, last sentence where it says "in  
12 order to determine the market value", do you  
13 see that?

14 A. Yes.

15 Q. So KTR wrote, "In order to  
16 determine the market value of the subject  
17 land, sales of similarly zoned development  
18 sites in the immediate market have been  
19 researched, analyzed and adjusted based on  
20 relevant elements of comparison." Do you see  
21 that?

22 A. Yes.

23 Q. So do you have any recollection  
24 of whether Vanderbilt directed KTR to use  
25 the land sales comparison approach?

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2 A. No.

3 Q. Do you recall Vanderbilt having  
4 any discussions with KTR about what  
5 valuation approach should be used?

6 A. Again, that goes back to what  
7 exactly you asked before relating to another  
8 question. There was various discussions  
9 about all of that.

10 Q. And so Vanderbilt ultimately  
11 directed KTR to use the land sales  
12 comparison approach?

13 A. No.

14 MR. KOH: Objection. Come on.  
15 That's not what he said. You're better  
16 than that, Brendan.

17 MR. WALSH: Relax, Howard.

18 MR. KOH: I'm very relaxed.

19 MR. WALSH: I'm trying to get an  
20 answer from a witness who has very few  
21 answers.

22 MR. KOH: That doesn't mean you  
23 get to ask a leading question that  
24 completely mischaracterizes his prior  
25 testimony. Let's move on.

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2 MR. WALSH: He can answer  
3 however he wants, Howard.

4 Q. So my question is --

5 MR. KOH: That doesn't mean I  
6 can't object.

7 Q. -- do you recall being involved  
8 in any discussions about or was Vanderbilt  
9 involved in any discussions about whether an  
10 approach, other than land sales comparison  
11 approach, should be used?

12 A. As I said, there's been various  
13 conversations about that topic, so I can't  
14 remember, like, what the conversation was  
15 and the nature of it all, you know, all  
16 throughout this.

17 Q. Okay. Did Vanderbilt ever try to  
18 research on its own potential comparable  
19 ground leases?

20 A. Probably.

21 Q. And what did Vanderbilt find?

22 A. I can't remember what I find.

23 Q. If that work was performed,  
24 would that be in your files somewhere?

25 A. If I have it in files, if I have

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2 it you would have seen it. I handed you over  
3 everything, so...

4 Q. So if no information about  
5 research on the part of Vanderbilt about  
6 comparable ground leases has been produced,  
7 does that suggest to you that Vanderbilt did  
8 not do that work?

9 MR. KOH: Objection. Go ahead.

10 A. I'm not sure I understood the  
11 question, Brendan.

12 Q. Let's put it this way, we've  
13 seen emails where Vanderbilt has provided  
14 comparable land sales to Tom Tener?

15 A. Okay.

16 Q. I am not aware of any  
17 communications between Vanderbilt and Tom  
18 Tener providing comparable ground leases,  
19 and I'm just wondering if you are aware of  
20 any such communications?

21 A. I'm not.

22 Q. And are you aware of any work  
23 done by Vanderbilt to identify comparable  
24 ground leases?

25 A. I vaguely remember thinking



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2 about this or having discussions about this  
3 but I remember in my head discussing -- I  
4 don't know even with who, discussing -- did  
5 you say comps?

6 Q. Comparable ground leases.

7 A. Oh, ground leases, I don't know.  
8 I don't know.

9 Q. Who else at Vanderbilt would  
10 have done that?

11 A. Same guys; Tom Li, maybe Morris  
12 Missry.

13 Q. Are you aware of any  
14 communications within Vanderbilt that there  
15 were not any comparable ground leases?

16 A. Again, I remember conversations.  
17 I don't remember. There was one  
18 conversation, they were not comparables,  
19 maybe it was ground leases, I can't  
20 remember, but something was -- some comps  
21 didn't exist, somebody said they did not  
22 exist, so --

23 Q. Okay. So if we could look at the  
24 page ending in 1943.

25 A. Okay.

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2 Q. It says under FMV Determination,  
3 first sentence, "In order to estimate the  
4 FMV of the demised premises, KTR analyzed  
5 the economic terms of relevant ground leases  
6 in Brooklyn, Queens and Manhattan." Do you  
7 see that?

8 A. Yes.

9 Q. Do you know what ground leases  
10 the report is referring to?

11 A. No.

12 Q. Would anyone at Vanderbilt know?

13 A. Maybe.

14 Q. Did you do anything to determine  
15 whether anyone at Vanderbilt would know  
16 about that?

17 A. No.

18 Q. And did KTR identify these  
19 ground leases on its own?

20 A. I don't know. You should ask  
21 KTR.

22 Q. I will.

23 MR. KOH: No charge for the  
24 suggestions on how to take  
25 depositions.

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MR. WALSH: I'm sorry. If we could mark VA-001508, it's a two-page document, an email chain, top email is an email from Sam Rottenberg to Morris Missry with a copy to Tom Tener and Tom Li dated April 11, 2019 at 10:36 a.m., marked as P-33.

(Plaintiff Exhibit 33, email string last dated April 11, 2019, Bates VA-001508 was received and marked on this date for identification.)

Q. Mr. Rottenberg, can you tell me when you have that open?

A. I have it open.

Q. So on the bottom of this first page it's an email from Tom Tener to Morris Missry and to you dated April 10th and he sends you a draft copy of his report, the letter opinion of value, and he wanted to know if either of you had any comments. Do you see that?

A. Yes.

Q. And you responded, "Looks fine,

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2 Tom. The only comment to this, if I have  
3 one, is that perhaps there might be a little  
4 room to be a little bit more aggressive on  
5 the residential valuation. In any event,  
6 it's fine." Do you see that?

7 A. I do.

8 Q. So you thought that he actually  
9 had undervalued the property?

10 A. That's what it looks like from  
11 this email, yes.

12 Q. Well, do you recall having that  
13 impression?

14 A. No.

15 Q. So next I want to talk about a  
16 meeting that was held on June 19th, 2019  
17 between representatives of Vanderbilt and  
18 representatives of McDonald's, including the  
19 two appraisers. Do you remember that  
20 meeting?

21 A. Yes.

22 Q. Who was at that meeting?

23 A. Myself, Tom Li, Morris Missry,  
24 Sharon Locatel, Carol Demarco, Mike Meyer.  
25 That's what I remember. I don't know if

1 PINCHUS S. ROTTENBERG

2 somebody else was there, maybe Tom Tener.

3 Q. And what do you recall being  
4 discussed at that meeting?

5 A. What are we trying to do back  
6 then? The meeting was taking about a path  
7 forward. Is that what the meeting was? Oh,  
8 it's about the various opinion of values  
9 between the two appraisers.

10 Q. And was that the first time that  
11 the two sides shared the valuations that  
12 their appraisers had arrived at?

13 A. According to my recollection,  
14 yes, but I might not be right. It's  
15 according to my recollection.

16 MR. WALSH: Okay. I'd like to  
17 mark VA-049199, it's a one-page  
18 document of handwritten notes and  
19 you'll need to rotate the screen in  
20 order to view them.

21 (Plaintiff Exhibit 34,  
22 handwritten notes, Bates VA-049199 was  
23 received and marked on this date for  
24 identification.)

25 Q. That is now available?

1 PINCHUS S. ROTTENBERG

2 A. I don't see it.

3 CONCIERGE: It should be there  
4 now.

5 Q. It's P-34.

6 A. Yes. I see this.

7 Q. Do you recognize that  
8 handwriting?

9 A. No.

10 Q. So that's not your handwriting?

11 A. No. That's not my handwriting,  
12 no.

13 Q. I need to rotate this. Hold on.

14 MR. KOH: Put your mouse down to  
15 the bottom of the screen, there is a  
16 rotate button.

17 A. That is not my handwriting. No,  
18 sir.

19 Q. That's not your handwriting?

20 A. No.

21 Q. Do you know if it's Tom Li's?

22 A. No.

23 Q. I'm not sure if you're able to  
24 decipher what these notes reflect, but if  
25 you could just take a look and see if this

1 PINCHUS S. ROTTENBERG

2 refreshes your recollection about what was  
3 discussed at the meeting?

4 A. Wasn't that what I told you  
5 before the conversation was about?

6 Q. Well, do you remember anyone  
7 from McDonald's saying that the encumbrance  
8 of the McDonald's lease has to be considered  
9 in an appraisal during that meeting?

10 A. Again, I remember it was talked  
11 and I don't remember whether it was at that  
12 meeting -- maybe it was at that meeting.

13 Q. You don't remember?

14 A. I remember it was discussed at  
15 that meeting but I don't remember whether it  
16 was the first time or the second time. So I  
17 can't remember that part.

18 Q. And had Vanderbilt discussed in  
19 advance of that meeting what its position  
20 would be about whether the --

21 MS. ALVAREZ: Brendan's computer  
22 just went black.

23 VIDEOGRAPHER: Do you want to go  
24 off the record?

25 MR. KOH: It looks like he might

1 PINCHUS S. ROTTENBERG

2 be back.

3 Only in America in the 21st  
4 Century could rain interfere with an  
5 internet connection.

6 THE WITNESS: Is it rain?

7 MR. WALSH: There was a big bolt  
8 of lightening and then our power went  
9 out but it seems to be back on.

10 (Pending question is read back  
11 by the reporter.)

12 Q. -- whether the encumbrance of  
13 the lease needed to be considered in the  
14 appraisers' valuations under the Option Rent  
15 Addendum?

16 A. There was discussions. I'm not  
17 sure if it was before the meeting or after  
18 the meeting. There were discussions relating  
19 to that.

20 Q. And do you remember Tom Tener  
21 telling Vanderbilt that he believed that the  
22 encumbrance of the lease should be  
23 considered?

24 A. I don't remember what Tom Tener  
25 said. I remember having this conversation.



1 PINCHUS S. ROTTENBERG

2 As I told you before, there is various  
3 opinions throughout this thing by various  
4 people, by the same people, different times,  
5 different opinions. So I don't know.

6 Q. And what do you recall Tom  
7 Tener's criticisms being of McDonald's -- of  
8 the report prepared by Sharon Locatel from  
9 McDonald's?

10 A. I don't know which approach.  
11 There was one approach to it, that there is  
12 a difference how, you know, you go about the  
13 appraisal, which approach you take. That's  
14 my understanding.

15 Q. So what are Vanderbilt's --

16 A. I don't remember. I have to go  
17 look because I don't remember what it was.

18 Q. So you don't know what  
19 Vanderbilt's position is about --

20 A. It was various approaches.

21 Q. If you let me finish. Please  
22 let me finish.

23 (Pending question is read back  
24 by the reporter.)

25 Q. -- about the alleged deficiency

1 PINCHUS S. ROTTENBERG

2 with the analysis performed by Sharon  
3 Locatel?

4 A. Again, I always deferred -- you  
5 asked me similar questions about other  
6 matters or maybe this matter, which I defer  
7 to the people that I hired for this.

8 Q. Do you contend or does  
9 Vanderbilt contend -- I'll move on. Never  
10 mind.

11 So after this June 2019 meeting,  
12 what instructions did Vanderbilt give to Tom  
13 Tener about how to proceed?

14 A. I don't remember whether we did  
15 give them any direction.

16 Q. So you don't know what  
17 instructions were given to Tom Tener after  
18 this meeting? Who would know?

19 A. Myself or Tom Li.

20 Q. Anybody else?

21 A. Or maybe Morris Missry.

22 Q. And do you recall discussing  
23 with Tom Tener about him performing a land  
24 residual analysis after this meeting?

25 A. Not in words, no.

1 PINCHUS S. ROTTENBERG

2 (Reporter clarification.)

3 Q. You don't recall that?

4 A. What was your question?

5 (Pending question is read back  
6 by the reporter.)

7 A. I'm not sure whether it was  
8 after the meeting, before the meeting,  
9 whether a land residual or comps, now it  
10 kind of -- it refreshes my memory the  
11 differences between the comps or the land  
12 residual or the sales comparison. So I don't  
13 remember at which given juncture that  
14 conversation took place.

15 Q. And did Vanderbilt eventually  
16 direct Tom Tener to prepare a land residual  
17 analysis for this property?

18 A. I did not direct him.

19 Q. Did anyone at Vanderbilt?

20 A. I don't think so.

21 Q. Did anyone on behalf of  
22 Vanderbilt?

23 A. I don't know.

24 Q. After the June 19 meeting did  
25 Vanderbilt ask Tener to consider the

1 PINCHUS S. ROTTENBERG

2 encumbrances in his analysis?

3 A. I don't know Vanderbilt or  
4 anybody else. I don't think Vanderbilt  
5 asked.

6 Q. When I say Vanderbilt, just to  
7 be clear, I also mean people acting on  
8 behalf of Vanderbilt, including Morris  
9 Missry?

10 A. Morris Missry might have asked.

11 Q. Do you know if he did?

12 A. I don't know whether he asked  
13 him or there was a discussion. I'm not sure  
14 how that went about but there was a  
15 discussion about that, I think.

16 Q. When was the last time you spoke  
17 with Morris Missry?

18 A. I can't remember.

19 Q. Was it in the past month?

20 A. No.

21 Q. Past two months?

22 A. No.

23 Q. Past six months?

24 A. Yeah, probably.

25 Q. And what was the purpose of your

1 PINCHUS S. ROTTENBERG

2 last discussion with him?

3 A. Not about this matter at all.

4 MR. WALSH: Okay. I'd like to  
5 mark VA-016196. It's a three-page  
6 email chain with the top email being  
7 an email from Sam Rottenberg to Tom  
8 Tener and Morris Missry with a copy to  
9 Tom Li on July 2nd, 2019 at 3:54 a.m.

10 (Plaintiff Exhibit 35, email  
11 string last dated July 2, 2019, Bates  
12 VA-016196 was received and marked on  
13 this date for identification.)

14 A. 3:54 a.m.?

15 Q. That's what it says.

16 CONCIERGE: The document is  
17 being uploaded.

18 Q. If you could please refer to  
19 P-35?

20 A. I see it.

21 Q. Are you looking at it?

22 A. I'm looking at it, yes.

23 Q. And --

24 A. The letter isn't attached, the  
25 one they refer to in this letter, so...

1 PINCHUS S. ROTTENBERG

2 Q. Right. So this letter or this  
3 email, this was dated I guess the second  
4 email down, the long email, Thursday, June  
5 27th, 10:59 a.m. Do you see that email?

6 A. Yes.

7 Q. Okay. And would you agree that  
8 the words in black ink appear to have been  
9 written by Tom Tener and your comments are  
10 below in red, according to the email above?

11 A. That's what I'm thinking as you  
12 talk to me, but kind of from this email  
13 that's what it looks like.

14 Q. So in the second bullet point,  
15 reading your red writing, you conclude by  
16 saying "and yes, I think it is important to  
17 get the land residual analysis done." Do you  
18 see that?

19 A. I do.

20 Q. And why did you think it was  
21 important to get the land residual analysis  
22 done?

23 A. I can't remember why I thought  
24 that back then.

25 Q. Before this do you recall if you

1 PINCHUS S. ROTTENBERG

2 had previously discussed doing a land  
3 residual analysis with Tom Tener?

4 A. Again, there was discussions. I  
5 don't know whether it was previously or  
6 after kind of.

7 Q. And why did you think it was a  
8 good idea to do it now?

9 A. You asked me that question a  
10 second ago. I don't remember why what I  
11 thought back then.

12 Q. Do you remember why Tom Tener  
13 suggested that it be done?

14 A. No.

15 Q. So looking at point two, second  
16 sentence he says, "Based on the concerns  
17 raised in the June '19 meeting it may be  
18 prudent to supplement my FMR determination  
19 with a land residual analysis, taking into  
20 consideration the 20 term of the lease." Do  
21 you see that?

22 A. I do.

23 Q. So Vanderbilt directed Tener to  
24 perform a land residual analysis based upon  
25 the concerns raised at the June 19 meeting,

1 PINCHUS S. ROTTENBERG

2 right?

3 A. Yes.

4 Q. And specifically about Tener's  
5 failure to consider the encumbrance of the  
6 lease in his original analysis, right?

7 A. I don't know what that part is  
8 coming from.

9 Q. Do you see where it says "taking  
10 into consideration the 20 term of the  
11 lease"?

12 A. In parenthesis, right?

13 Q. Right. So wouldn't you agree  
14 that it's because Tom was concerned about  
15 his failure to consider the encumbrance of  
16 the lease?

17 A. Tom should be able -- Tom should  
18 be able to answer this question. I can't  
19 talk for Tom Tener. I can't talk for Tom  
20 Tener. I don't know what he --

21 Q. I'm asking you to talk to behalf  
22 of Vanderbilt.

23 MR. KOH: Okay. Same objection.

24 Q. Did you have concerns about  
25 Tom's failure to consider the encumbrance of



1 PINCHUS S. ROTTENBERG

2 the lease in his original analysis?

3 A. No.

4 Q. Then why did you have him  
5 prepare the land residual analysis?

6 A. I had him prepare? This is what  
7 he's doing.

8 Q. What do you mean by that?

9 A. I'm not sure what -- why I did  
10 it back then and what -- I cannot kind of --  
11 Tom Tener does his own work, right?

12 Q. What is a land residual  
13 analysis?

14 MR. KOH: Objection. Go ahead.

15 THE WITNESS: You are waiting  
16 for an answer from me?

17 MR. KOH: Yes. The pending  
18 question was; what is a land residual  
19 analysis?

20 THE WITNESS: My understanding  
21 is you take the term of certain  
22 encumbrances and you see what the  
23 value is and what would be today based  
24 on that.

25 Q. Were you surprised to learn when

1 PINCHUS S. ROTTENBERG

2 you received Tom's updated report dated July  
3 30, 2019 that his opinion of value had not  
4 changed?

5 A. No.

6 Q. Why not?

7 A. Because based on my research,  
8 what I've done throughout this thing and  
9 based on, you know, kind of knowing what I  
10 know, I wasn't surprised.

11 Q. So what research had you done?

12 A. Based on -- you've seen the kind  
13 of -- you alluded to some of the appraisals  
14 before, so...

15 Q. I'm asking you, you said based  
16 upon your research you were not --

17 A. Based on me being -- knowing  
18 kind of the marketplace and knowing what  
19 properties should be valued, I wasn't  
20 surprised at all.

21 Q. So you weren't surprised that  
22 the fact that there was a 20-year -- I guess  
23 20-plus-year lease on the property, you  
24 weren't surprised that that lease didn't  
25 impact the valuation analysis?

1 PINCHUS S. ROTTENBERG

2 A. No.

3 Q. Now, did Vanderbilt ever  
4 consider directing Tom to redo his original  
5 analysis but taking into account the  
6 encumbrance of the lease?

7 A. Yes. I think this is what the  
8 email said. Again, what was the question?

9 Q. No. I guess what I'm asking is,  
10 so Vanderbilt directed Tom to prepare a land  
11 residual analysis?

12 A. Vanderbilt or somebody else on  
13 behalf, acting on behalf of Vanderbilt.

14 Q. Right. So somebody --

15 A. Again, I defer this to the  
16 attorneys and their appraisers. I think they  
17 were the ones actually making up for all of  
18 this.

19 MR. KOH: Slow down. Slow down.

20 Mr. Rottenberg, please answer the  
21 question that Mr. Walsh asks you, not  
22 the question that you think he's  
23 asking you.

24 Q. So the attorneys -- the  
25 attorneys were making all the decisions for

1 PINCHUS S. ROTTENBERG

2 you; is that correct?

3 A. I don't know all the decisions  
4 but they've been involved in these  
5 discussions, yes.

6 Q. And so I would need to talk to  
7 Morris Missry to understand Vanderbilt's  
8 position?

9 A. No.

10 Q. Well, then how would I do it?  
11 Who else would know?

12 A. I would know. To the extent I  
13 remember I would know.

14 Q. Okay. So did Vanderbilt ever  
15 consider having Tom Tener redo his original  
16 land sales comparison analysis but take into  
17 account the encumbrances on the property?

18 A. Yeah. That was said to him.

19 Q. So he was told to do that?

20 A. Yes.

21 Q. And did he do that?

22 A. I think so.

23 Q. So maybe you're confusing  
24 things, but I'm aware that -- so why don't  
25 we take a look at --

1 PINCHUS S. ROTTENBERG

2 MR. KOH: Hold on. The witness  
3 is trying to answer the question. He's  
4 not trying to confuse things.

5 MR. WALSH: Well, I'm saying  
6 maybe we're confused is all I'm  
7 suggesting.

8 MR. KOH: That's not what the  
9 transcript says but I understand that  
10 you may have misspoke. Go ahead.

11 MR. WALSH: Let's mark  
12 VA-001045, please. This is the July  
13 30, 2019 Tener letter opinion of  
14 value.

15 (Plaintiff Exhibit 36, Tener  
16 letter opinion of value dated July 30,  
17 2019, Bates VA-001045 was received and  
18 marked on this date for  
19 identification.)

20 CONCIERGE: That was 001 --

21 MR. WALSH: -- 001045.

22 Q. Let me know when that is  
23 available to you, Mr. Rottenberg. That is  
24 Exhibit P-36. It's available on my end.

25 A. Okay.

1 PINCHUS S. ROTTENBERG

2 Q. So if you take a look, and even  
3 if you'd like you can compare it to his  
4 prior report, which is P-32, wouldn't you  
5 agree that he did not change anything with  
6 his land sales comparison analysis and  
7 simply added a land residual analysis at the  
8 end?

9 A. If you tell me that that's what  
10 it is, okay.

11 Q. Okay. So I guess what I'm trying  
12 to understand is, was any consideration  
13 given to having Mr. Tener redo his original  
14 land sales comparison analysis while taking  
15 into account the encumbrances rather than  
16 having him do a separate analysis? Do you  
17 understand my question?

18 A. No, sir. Sorry.

19 Q. Let me try again. In April of  
20 2019 Mr. Tener valued the property using one  
21 method, the land sales comparison approach,  
22 correct?

23 A. Okay.

24 Q. I'm asking you. Let me ask you  
25 this, when was the last time you reviewed

1 PINCHUS S. ROTTENBERG

2 Mr. Tener's appraisals?

3 A. Long time ago.

4 Q. So you did not look at these  
5 again in preparation for today's deposition?

6 A. No.

7 Q. Okay. Do you know, other than  
8 the work that Mr. Tener did in his August  
9 2019 report, which was to add a land  
10 residual analysis to his April 2019 report,  
11 did Vanderbilt consider having Mr. Tener  
12 change his report or analysis in any other  
13 way?

14 A. I don't know. I don't remember.

15 Q. Who would know?

16 A. I would know but I don't  
17 remember. Maybe.

18 Q. Who else would know?

19 A. Maybe Tom Li.

20 Q. Would Morris Missry know?

21 A. Perhaps, yeah.

22 MR. WALSH: Give me one minute.

23 Hold on.

24 Q. I'd like to talk about the  
25 selection of the third appraiser of that

1 PINCHUS S. ROTTENBERG

2 process.

3 Do you recall that the Option  
4 Rent Addendum talks about if the parties  
5 appraisers' appraisals differ by more than  
6 15%, then the two appraisers shall appoint a  
7 third appraiser?

8 A. Yes.

9 Q. Okay. Did Tom Tener conduct the  
10 search for a third appraiser alone or did  
11 Vanderbilt or someone else assist?

12 A. I don't remember being involved  
13 in that.

14 Q. So Topic 3 in our deposition  
15 notice asks you to be prepared to testify  
16 about "communications between Vanderbilt and  
17 Tener concerning the selection of a third  
18 appraiser." Do you see that?

19 A. Yes.

20 Q. Well, you don't have to look at  
21 it.

22 A. That's Exhibit 1, right? That's  
23 the first exhibit?

24 Q. Yeah. It's Topic 3,  
25 "communications between Vanderbilt and Tener



1 PINCHUS S. ROTTENBERG  
2 concerning the selection of a third  
3 appraiser."

4 A. Okay.

5 Q. So do you have any knowledge  
6 about whether Vanderbilt participated in  
7 that process with Mr. Tener?

8 A. Yeah. As I said, I don't think I  
9 participated in any of that.

10 Q. I'm asking about Vanderbilt, not  
11 you. You're here as a corporate  
12 representative on behalf of Vanderbilt.

13 So did Vanderbilt -- was it  
14 involved in that process?

15 A. I can't remember.

16 MR. WALSH: If we can mark  
17 VA-019025, it's a nine-page email  
18 chain that spans to 019034, and that  
19 will be marked as P-37.

20 (Plaintiff Exhibit 37, email  
21 string last dated April 25, 2019,  
22 Bates VA-019025 was received and  
23 marked on this date for  
24 identification.)

25 A. I see it.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. If you could go to the  
3 second page ending in 026, bottom email,  
4 it's an email April 23rd, 2019 at 12:45 p.m.  
5 from Tom Tener to -- looks like Morris  
6 Missry. Do you see that?

7 A. Yes.

8 Q. Tom writes, "Morris, I will be  
9 speaking with Sharon Locatel tomorrow to go  
10 over the logistics of this FMR determination  
11 and to begin the discussion about the  
12 selection of the third appraiser. Please  
13 send me the list of appraisers that Sam has  
14 spoken with about this property. Besides  
15 Amanda Aaron, are there any other appraisers  
16 that you do not want to be considered." Do  
17 you see that?

18 A. Yes.

19 Q. So what appraisers had you  
20 spoken to about this property that we  
21 haven't already discussed today?

22 A. I don't remember. This goes  
23 back to what you asked me a minute ago. I  
24 don't remember. I'm kind of refreshing my  
25 memory as you bring up this document.

1 PINCHUS S. ROTTENBERG

2 Q. And did you have discussions  
3 with Amanda Aaron?

4 A. I don't remember.

5 Q. Do you know who she is?

6 A. No. I know she -- I don't know.  
7 There is an appraisal company.

8 Q. But Vanderbilt never hired her,  
9 right?

10 A. No, I don't think so.

11 Q. So if you -- if you could look  
12 at the emails that are above this up to the  
13 top of the first page, and rather than me  
14 reading them, if you could quickly read them  
15 and let me know when you've read to the top  
16 of the first page.

17 (Deponent reviews the document.)

18 A. So what is the question?

19 Q. Are you done reading it?

20 A. Yeah.

21 Q. The top email -- and this is a  
22 discussion about, you know, what names will  
23 be suggested for the third appraiser, Morris  
24 Missry said to Tom Tener on April 25th,  
25 2019, with a copy to you saying, "You know

1 PINCHUS S. ROTTENBERG

2 what we're looking for." Do you see that?

3 A. Yes.

4 Q. What is -- what was Vanderbilt  
5 looking for in a third appraiser?

6 A. I have no idea what he refers  
7 to. I was only copied on this. This went  
8 directly to Tom Tener.

9 Q. And that doesn't say "what I'm  
10 looking for", it says "what we're looking  
11 for."

12 A. Yeah. But I don't know what that  
13 refers to.

14 Q. And you're copied on it, right?

15 A. I see the email that I was  
16 copied, yes.

17 Q. So did you have discussions with  
18 Morris Missry about what Vanderbilt was  
19 looking for in a third appraiser?

20 A. I can't remember of any  
21 discussions such as these.

22 MR. WALSH: So if we can mark  
23 VA-001321, it's a two-page email  
24 chain. That would be marked as P-38.

25 (Plaintiff Exhibit 38, email

1 PINCHUS S. ROTTENBERG

2 string last dated May 6, 2019, Bates  
3 VA-001321 was received and marked on  
4 this date for identification.)

5 Q. That would be marked as P-38.

6 If you could just open that up?

7 A. Okay.

8 Q. So in these emails that are  
9 dated May 6, 2019 and it's emails that  
10 you're copied on between Morris Missry and  
11 Tom Tener and Tom indicates that he's  
12 considering including Marc Nakleh on his  
13 extended list and Mark said why and Tom  
14 responded, "I reviewed one of his appraisal  
15 reports they did for Brian Corcoran that  
16 detailed numerous ground rent percentages  
17 relative to land value. I will remind him of  
18 this data that he has available in his  
19 files. Some of this data is noted in my  
20 report and is supportive of a high  
21 percentage of the estimation of FMR." Do  
22 you see that?

23 A. Yes.

24 Q. Does this refresh your  
25 recollection about what Vanderbilt was

1 PINCHUS S. ROTTENBERG

2 looking for in a third appraiser?

3 A. No.

4 Q. And do you recall whether  
5 Mr. Nakleh was ever formally retained by the  
6 parties?

7 A. Who?

8 MR. KOH: I think it's  
9 pronounced Nakleh.

10 Q. Do you recall whether Mr. Nakleh  
11 was formally retained by the parties?

12 A. Nakleh I think it's pronounced.

13 Q. Okay.

14 A. I don't know whether -- if he  
15 was retained?

16 Q. Correct.

17 A. I don't know where this went  
18 off. I guess the reason why we're speaking  
19 here makes me unsure whether he was ever  
20 retained or...

21 Q. And do you recall Vanderbilt  
22 taking the position that the third appraiser  
23 could not have any discussions with the  
24 other two appraisers?

25 A. The reasoning of that?

1 PINCHUS S. ROTTENBERG

2 Q. Yes, if you recall that.

3 A. There was various positions on  
4 that, same as everything else, whether  
5 according to the lease is that -- you know,  
6 is that permitted or not permitted.

7 Q. And at the time Vanderbilt took  
8 the position that the three appraisers could  
9 not speak with each other, right?

10 A. I guess, yes, that was based on  
11 the -- a terminology that somebody saw, some  
12 of the attorneys saw from the lease.

13 Q. And that was Vanderbilt's  
14 position then, correct?

15 A. I guess on the advice of the  
16 attorneys, that was Vanderbilt's position.

17 Q. What is Vanderbilt's position  
18 now?

19 A. I think it was discussed already  
20 that we're talking about changing the  
21 opinion of value. I thought that was  
22 already discussed, that that's going to be  
23 shared or something, it's going to be shared  
24 between the parties. I don't recall what it  
25 was.

1 PINCHUS S. ROTTENBERG

2 Q. Do you know what Vanderbilt's  
3 position is on how the third appraiser can  
4 put the other two appraisers, if that is  
5 necessary, under the lease?

6 MR. KOH: Objection. Go ahead  
7 and answer to the extent you can  
8 answer.

9 A. I don't remember -- I don't  
10 remember what it was. I remember there was  
11 some understanding to share some of that  
12 letter opinion of value. So I forgot whether  
13 it was a letter opinion of value or the  
14 appraiser but one of them was agreed to  
15 share.

16 Q. So is it fair to say that  
17 Vanderbilt's position today is different  
18 from the position it took in April 2019  
19 about how the appraisers could work  
20 together?

21 A. I don't know how to categorize  
22 this.

23 Q. Do you believe that Vanderbilt's  
24 position today is different from the  
25 position it took in April 2019?



1 PINCHUS S. ROTTENBERG

2 A. I don't think -- I don't know. I  
3 don't know.

4 Q. Who would know?

5 A. Maybe Morris.

6 Q. Morris Missry would know? I  
7 thought you hadn't talked to him in six  
8 months.

9 MR. KOH: Is that a question?

10 Q. Have you talked to him within  
11 six months?

12 A. I can't remember when I spoke to  
13 him last.

14 Q. But -- so the only other person  
15 who might know whether Vanderbilt is taking  
16 a different position that Vanderbilt --

17 A. Or Tom Tener. Sorry. Tom Tener  
18 too.

19 Q. So Tom Tener would have been --  
20 Vanderbilt has given Tom Tener authority to  
21 make that determination on behalf of  
22 Vanderbilt?

23 A. No.

24 MR. KOH: Hold on. Hold on. Hold  
25 on.

PINCHUS S. ROTTENBERG

Can I get a clarification,  
Mr. Walsh, as to whether you're  
excluding counsel in the litigation  
from the -- from the question?

MR. WALSH: Well, look, I can't  
depose you, Howard, right? And --

MR. KOH: But you do know what  
we said in our litigation papers.

MR. WALSH: No, but I'm trying  
to understand who is making these  
decisions at Vanderbilt.

MR. KOH: Not sure why it  
matters. I'm not sure --

MR. WALSH: Howard, please let  
me ask my questions. Okay?

Q. If Vanderbilt changed its  
position from April 2019 to now, who at  
Vanderbilt would have authorized that change  
in position?

A. As I told you, there is no  
clarification who makes a decision at any  
given time. There is no sets of rules and  
regulations. This goes by, you know, by  
virtue of that time of that day. So I can't

1 PINCHUS S. ROTTENBERG

2 tell you who made the decision on any given  
3 time.

4 Q. Okay.

5 MR. KOH: Hold on a second.

6 MR. WALSH: No, Howard.

7 MR. KOH: There is an error in  
8 the transcript. That's all I want to  
9 correct.

10 MR. WALSH: What error?

11 MR. KOH: I'm quoting that "sure  
12 it matters". I did not say that.

13 Q. So Mr. Rottenberg, you do not  
14 know, as you sit here today, who would  
15 authorize a change in position on  
16 Vanderbilt's position as to how the three  
17 appraisers worked together between April  
18 2019 and now?

19 A. I would be the one authorizing  
20 that.

21 Q. But you're not aware of any  
22 position change?

23 A. Position from?

24 Q. From April 2019 to now?

25 A. I said before, I remember there

1                   PINCHUS S. ROTTENBERG  
2       was an agreement that they would be able to  
3       share certain documents that the position  
4       before was -- could not be shared.

5                   MR. KOH:    I'm sorry. Are you  
6       laughing at something?

7                   MR. WALSH:   I'm exasperated.

8                   MR. KOH:    Keep it to yourself,  
9       please, and try not to do that.

10                  MR. WALSH:   Howard, you can  
11       object to my questions. Okay? But --

12                  MR. KOH:    I can object to your  
13       behavior too, which I just did.

14                  MR. WALSH:   Fine.

15                  MR. KOH:    I'll speak when I feel  
16       I need to.

17                  Q.       So nobody else at Vanderbilt  
18       would have been involved in those  
19       discussions?

20                  A.       Yes, there would be.

21                  Q.       Who?

22                  A.       Tom Li would have been involved  
23       in those discussions, Morris Missry would  
24       have been in those discussions, and Tom  
25       Tener would have been involved in those

1 PINCHUS S. ROTTENBERG

2 discussions.

3 Q. Why did Vanderbilt change its  
4 position?

5 A. I don't remember. Again, this  
6 was conversations. I keep on saying the same  
7 thing. This is conversations that we have  
8 throughout this process that led I guess to  
9 have that change. I don't know what led to  
10 it. I can't sit here and tell you why.

11 MR. WALSH: Okay. If we can take  
12 a five minute break.

13 THE WITNESS: How long are we  
14 going to go today?

15 MR. WALSH: I'm hoping I'm  
16 wrapping up pretty soon.

17 MR. KOH: Let's come back in  
18 five minutes.

19 VIDEOGRAPHER: We are off the  
20 record at 5:39 p.m. This is the end  
21 of media 5.

22 (Recess is taken.)

23 VIDEOGRAPHER: We are back on  
24 the record at 5:50 p.m. and this marks  
25 the beginning of media unit 6.

1 PINCHUS S. ROTTENBERG

2 Q. Okay. Mr. Rottenberg, where are  
3 Vanderbilt's documents kept?

4 A. In my emails.

5 Q. I guess, let me -- so does  
6 Vanderbilt have an office separate and apart  
7 from -- does Vanderbilt have its own  
8 independent office where only Vanderbilt  
9 business is conducted?

10 A. No.

11 Q. And is Vanderbilt's business  
12 conducted out of your office?

13 A. Yes.

14 Q. And that's for SPR Group?

15 A. Yes.

16 Q. And are Vanderbilt's documents  
17 segregated in any way from other business  
18 that you perform at your office?

19 A. Yeah. Like everything else, they  
20 are being kept separate.

21 Q. How are they kept separate?

22 A. Separate file.

23 Q. What do you mean "a separate  
24 file"?

25 A. A separate file, separate.

1 PINCHUS S. ROTTENBERG

2 Q. What kind of file, a folder?

3 A. A-hum.

4 Q. So you are talking about  
5 physical documents?

6 A. I don't have any more physical  
7 documents than that's in the emails or  
8 whatever was -- yeah, the physical documents  
9 are documents stored just in my inbox.

10 Q. So just to give me an idea of  
11 quantity. You know, how many -- how much  
12 physical documents does Vanderbilt have?

13 A. I have no idea.

14 Q. A bankers box?

15 A. What?

16 Q. Is it like a bankers box of  
17 documents?

18 A. I don't know how big a bankers  
19 box is, but it's one folder, probably.

20 Q. So Vanderbilt has one folder of  
21 physical documents?

22 A. Correct.

23 Q. And then the rest would be  
24 electronic?

25 A. Correct.

1 PINCHUS S. ROTTENBERG

2 Q. And do you have -- does  
3 Vanderbilt or your firm have a document  
4 retention policy?

5 A. No, no policy.

6 Q. Did Vanderbilt issue a  
7 litigation hold with respect to this matter?

8 A. I'm sorry. Could you ask that  
9 question again?

10 Q. Did Vanderbilt issue a notice to  
11 people who may have documents that are  
12 relevant to this litigation? Did Vanderbilt  
13 tell people that may have documents relevant  
14 to this litigation to preserve those  
15 documents for this litigation?

16 A. Yeah. We always preserve. I'm  
17 not destroying any documents. I'm not  
18 destroying anything at all.

19 Q. That's not my question. My  
20 question was, was a notice ever sent telling  
21 people to preserve documents for this  
22 litigation?

23 A. I don't know whether there is a  
24 notice or it was just discussed.

25 Q. And when was that discussed?



1 PINCHUS S. ROTTENBERG

2 A. I can't remember a date.

3 Q. Who was involved in those  
4 discussions?

5 A. Myself and Tom Li.

6 Q. And what was discussed?

7 A. That we will have to hand over  
8 all the documents.

9 Q. Was that conversation in the  
10 past six months?

11 A. I can't remember. This was -- I  
12 can't remember whether this was six months  
13 or the beginning or throughout or both or  
14 kind of -- this could have been in the  
15 beginning of this process, throughout this  
16 process, in the last six months.

17 Q. Was it before we all started  
18 working remotely in March 2020 or after  
19 March 2020?

20 A. I guess before and after. I  
21 think these conversations was at both times.

22 Q. And were these conversations  
23 documented anywhere, in notes or emails,  
24 anything like that?

25 A. I don't think so.

1 PINCHUS S. ROTTENBERG

2 Q. So there is nothing you can  
3 provide to us to show that these  
4 conversations actually occurred?

5 A. I don't think so, no.

6 Q. When did Vanderbilt begin  
7 collecting documents to produce in this  
8 litigation?

9 A. When we were asked to.

10 Q. When was that?

11 A. I don't know the dates, the  
12 times.

13 Q. And going back to the  
14 preservation issue about when you and Tom  
15 had those conversations, was that before  
16 McDonald's filed its Complaint in November  
17 2019 or after McDonald's filed its Complaint  
18 or you just don't remember?

19 A. I don't remember.

20 Q. Just to go back to my  
21 previous -- to my other question before I  
22 got sidetracked, approximately when did  
23 Vanderbilt begin collecting documents to  
24 produce in this litigation?

25 A. When we were asked to.

1 PINCHUS S. ROTTENBERG

2 Q. But my question is when?

3 A. I don't remember when we were  
4 asked to. Whenever we were asked to collect  
5 documents, at that time we did it.

6 Q. Was that in 2021 or 2020 or  
7 2019?

8 A. It's either 2020 or 2021.

9 Q. And did you ever review the  
10 requests for production served on Vanderbilt  
11 by McDonald's in this litigation?

12 A. I'm sorry?

13 Q. So McDonald's served on  
14 Vanderbilt document requests. Have you ever  
15 seen those document requests?

16 A. Yes.

17 Q. And then you undertook the  
18 process of trying to collect documents  
19 responsive to that?

20 A. Yes.

21 Q. And so were the documents  
22 collected before or after you saw those  
23 document requests?

24 A. I don't know when that happens,  
25 which timeline that happens, when I was

1 PINCHUS S. ROTTENBERG

2 requested and all that.

3 Q. Whose documents were collected?

4 A. I guess we collected all the  
5 documents that -- I collected my documents,  
6 Tom collected his documents.

7 Q. Okay. And were any other  
8 documents collected from anyone else?

9 A. Not what I know of. I don't know  
10 the attorneys and appraisers. I'm just  
11 talking about us.

12 Q. So did you have any  
13 communications or discussions with Morris  
14 Missry about collecting documents from him?

15 A. No.

16 Q. Do you know if anyone else at  
17 Vanderbilt did?

18 A. Maybe Howard but I don't know.

19 Q. But other than attorneys?

20 A. No.

21 Q. And did you have conversations  
22 with anyone at the Rabsky Group about  
23 documents relating to Vanderbilt?

24 A. No.

25 Q. And do you know how documents

1 PINCHUS S. ROTTENBERG

2 were reviewed and determined to be  
3 responsive or not responsive to our  
4 discovery demands?

5 A. No.

6 Q. And when you turned over  
7 documents did you make the decision about  
8 whether a particular document was responsive  
9 or did your attorneys?

10 A. My attorneys.

11 Q. So you turned over all of your  
12 documents?

13 A. Yes.

14 Q. And how did you determine what  
15 documents to produce?

16 A. I did not determine. I just  
17 handed them over everything.

18 Q. So you gave them access to every  
19 file that you have in your office?

20 A. Everything.

21 Q. Whether it related to Vanderbilt  
22 or not?

23 A. Everything.

24 Q. And then from there you don't  
25 know what happened?

1 PINCHUS S. ROTTENBERG

2 A. I don't know.

3 MR. WALSH: If I could just take  
4 two minutes, I think I'm just about  
5 done. I want to look at my notes but  
6 if we can take a short two-minute  
7 break and put us in the breakout rooms  
8 and I'm just about wrapped up.

9 VIDEOGRAPHER: Going off at 6:01  
10 p.m.

11 (Recess is taken.)

12 VIDEOGRAPHER: We are back on  
13 the record at 6:04 p.m.

14 Q. Mr. Rottenberg, thank you for  
15 your time today. I know it's been a long day  
16 and I appreciate your patience. Just a  
17 couple of final questions.

18 Have you ever been convicted of  
19 a crime?

20 A. No.

21 Q. Have you ever been sued in a  
22 civil matter personally?

23 A. No.

24 Q. And have you ever been accused  
25 of fraud in any, you know, civil or criminal

1 PINCHUS S. ROTTENBERG

2 proceeding?

3 A. No.

4 MR. WALSH: Okay. I don't have  
5 any further questions.

6 MR. KOH: Well, thank you very  
7 much, Mr. Walsh. This deposition is  
8 concluded and I guess we'll see  
9 everybody on Tuesday when Mr. Meyer is  
10 deposed.

11 MR. WALSH: Okay. Thank you and  
12 everybody --

13 VIDEOGRAPHER: Let me close out  
14 the record, Mr. Rottenberg. This  
15 concludes today's testimony of Sam  
16 Rottenberg. We're going off the record  
17 at 6:06 p.m. This also concludes  
18 media 6.

19 (The proceedings were adjourned  
20 at 6:06 p.m.)

21

22

23

24

25

C E R T I F I C A T E

I, MAUREEN M. RATTO, a Registered Professional Reporter, do hereby certify that prior to the commencement of the examination PINCHUS S. ROTTENBERG was sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the proceedings as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in this action.



MAUREEN M. RATTO, RPR

License No. 817125



1 I N D E X

2 WITNESS: PINCHUS S. ROTTENBERG 7

3 DIRECT EXAMINATION BY MR. WALSH 7

4

5 E X H I B I T S

6 Plaintiff Exhibit 1, Amended Rule 15

7 30(b)(6) notice to Vanderbilt

8 Atlantic Holdings

9 Plaintiff Exhibit 2, 35

10 Organizational Chart for 840

11 Atlantic Avenue, Bates VA-029030

12 Plaintiff Exhibit 3, email string 43

13 last dated June 19, 2017, Bates

14 VA-016544

15 Plaintiff Exhibit 4, lease re: 840 70

16 Atlantic Avenue, Brooklyn, New

17 York, Bates VA-010103

18 Plaintiff Exhibit 5, email string 88

19 dated last November 21, 2017,

20 Bates VA-21570

21 Plaintiff Exhibit 6, Memorandum of 98

22 Lease of Vanderbilt,

23 Plaintiff Exhibit 7, email string 104

24 last dated February 10, 2017,

25 Bates VA-21304

1	Plaintiff Exhibit 8, email string	109
2	last dated January 17, 2018, Bates	
3	VA-010383	
4	Plaintiff Exhibit 9, minutes of	115
5	the Community Board M-CROWN	
6	Subcommittee dated April 30, 2018,	
7	Bates VA-49382	
8	Plaintiff Exhibit 10, email string	120
9	last dated May 29, 2018, Bates	
10	VA-010453	
11	Plaintiff Exhibit 11, email string	122
12	last dated March 13, 2018, Bates	
13	VA-020147	
14	Plaintiff Exhibit 12, 840 Atlantic	126
15	Avenue Rezoning Environmental	
16	Assessment Statement, Bates	
17	MCD006083	
18	Plaintiff Exhibit 13, email string	136
19	last dated February 26, 2018,	
20	Bates MCD006379	
21	Plaintiff Exhibit 14, email string	144
22	last dated February 16, 2018,	
23	Bates MCD008022	
24	Plaintiff Exhibit 15, letter from	147
25	Vanderbilt Atlantic Holdings to	

1 McDonald's Corporation dated May  
2 10, 2018, Bates MCD005479  
3 Plaintiff Exhibit 16, McDonald's 151  
4 Option Rent Addendum,  
5 Plaintiff Exhibit 17, email string 162  
6 last dated May 30, 2018, attaching  
7 retention agreement, Bates  
8 VA-015253  
9 Plaintiff Exhibit 18, Appraisal 166  
10 Report value as of June 26, 2018,  
11 Bates VA-010599  
12 Plaintiff Exhibit 19, email string 173  
13 last dated June 7, 2018, Bates  
14 VA-022633  
15 Plaintiff Exhibit 20, email 181  
16 attaching engagement letter dated  
17 June 27, 2018, Bates VA-010586  
18 Plaintiff Exhibit 21, email string 185  
19 last dated August 9, 2018, Bates  
20 VA-023216  
21 Plaintiff Exhibit 22, KTR 191  
22 Appraisal Report dated August 30,  
23 2018, Bates VA-000002  
24 Plaintiff Exhibit 23, draft real 204  
25 estate appraisal report dated

1 January 8th, 2019, Bates VA-011951  
2 Plaintiff Exhibit 24, email string 210  
3 dated February 14, 2019, Bates  
4 VA011918  
5 Plaintiff Exhibit 25, email string 212  
6 last dated February 26, 2019,  
7 Bates VA-012456  
8 Plaintiff Exhibit 26, Metropolitan 224  
9 Desk Appraisal dated February 27,  
10 2019, Bates VA-012503  
11 Plaintiff Exhibit 27, email string 229  
12 dated last February 25, 2019,  
13 Bates VA-016358  
14 Plaintiff Exhibit 28, email string 233  
15 last dated March 12, 2019, Bates  
16 VA-015989  
17 Plaintiff Exhibit 29, email dated 241  
18 April 1, 2019, Bates VA-000958  
19 Plaintiff Exhibit 30, email dated 244  
20 April 1, 2019 with attached  
21 Appellate Decision, Bates  
22 VA-000699  
23 Plaintiff Exhibit 31, email string 247  
24 dated last April 1, 2019, Bates  
25 VA-001753

1 Plaintiff Exhibit 32, KTR 258  
2 appraisal report dated April 15,  
3 2019 Bates VA-001940  
4 Plaintiff Exhibit 33, email string 266  
5 last dated April 11, 2019, Bates  
6 VA-001508  
7 Plaintiff Exhibit 34, handwritten 268  
8 notes, Bates VA-049199  
9 Plaintiff Exhibit 35, email string 276  
10 last dated July 2, 2019, Bates  
11 VA-016196  
12 Plaintiff Exhibit 36, Tener letter 284  
13 opinion of value dated July 30,  
14 2019, Bates VA-001045  
15 Plaintiff Exhibit 37, email string 288  
16 last dated April 25, 2019, Bates  
17 VA-019025  
18 Plaintiff Exhibit 38, email string 291  
19 last dated May 6, 2019, Bates  
20 VA-001321

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J U R A T

I do hereby certify that I have  
read the foregoing transcript of my  
deposition.

-----  
PINCHUS S. ROTTENBERG

Sworn and subscribed  
before me  
this \_\_\_\_\_ day of  
\_\_\_\_\_, 2021

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a Notary Public of  
the State of \_\_\_\_\_

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ERRATA SHEET

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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